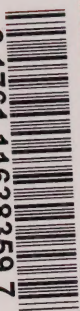



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ANGÉLINE MARTEL

OFFICIAL LANGUAGE MINORITY EDUCATION RIGHTS IN CANADA: FROM INSTRUCTION TO MANAGEMENT

January 1991

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PREFACE

After the Canadian Charter of Rights and Freedoms came into force on April 17, 1982, many interested observers expected that section 23 would produce far more spectacular results than have materialized. A deep disenchantment has gradually replaced the initial enthusiasm engendered in most minority communities by the promises of educational services essential to their survival and vitality. In most provinces the number of minority facilities created over the years falls far short, even now, of meeting the needs and respecting the rights of the official language minority communities. Faced with the resulting erosion of one of the essential underpinnings of Canadian linguistic duality, the Office of the Commissioner of Official Languages has become increasingly concerned about this slow pace and the absence of data and analyses that might serve to clarify and guide the implementation of the relevant constitutional provisions.

In the Mahé decision, which was handed down on March 15, 1990, the Supreme Court of Canada confirmed just how right we were to be concerned, like so many others, about the situation and to feel that it was our duty to be involved in this central issue. The Supreme Court stated that:

“Section 23 is one component in Canada’s constitutional protection of the official languages. The section is especially important in this regard, however, because of the vital role of education in preserving and encouraging linguistic and cultural vitality. It thus represents a linchpin in this nation’s commitment to the value of bilingualism and biculturalism.”

It is therefore easy to understand why the Office of the Commissioner of Official Languages wished to contribute to the implementation of section 23 as the cornerstone of its youth option. Accordingly, Maxwell Yalden, the then Commissioner of Official Languages, appeared before the Special Parliamentary Committee on the Constitution in 1981, when the wording of section 23 of the Charter was being debated. Then, in 1984, in the first constitutional reference on the meaning and scope of this provision, the Ontario Court of Appeal granted the Commissioner intervenor status and sanctioned his interpretation of the linguistic definition of the term “minority facilities”. That same year, in a decision handed down in the case of the *Association of Quebec Protestant School Boards v. the Attorney General of Quebec*, the Supreme Court of Canada stated “...the framers of the Constitution manifestly regarded as inadequate some — and perhaps all — of the regimes in force at the time the *Charter* was enacted, and their intention was to remedy the perceived defects of these regimes by uniform corrective measures, namely those contained in s. 23 of the *Charter*, which were at the same time given the status of a constitutional guarantee.” The Commissioner was subsequently authorized to intervene in other cases heard by the courts of appeal of several provinces, as well as in the Mahé case in the Supreme Court of Canada.

Noting the large number of cases being brought before the courts and viewing them as needlessly costly in social terms, the Office of the Commissioner wished to promote a

more fruitful approach. In 1986 it took the initiative of proposing to the Council of Ministers of Education, Canada, a research activity whose merits were defended by the then Secretary of State, David Crombie, and in which the Office of the Commissioner was prepared to participate. Since it was a question of reforming “inadequate regimes”, and since the territories and most of the provinces faced similar problems, this approach seemed quite logical to us. Indeed, it seemed to us that, sooner or later, most authorities would inevitably have to develop, in consultation with the parties concerned, a provincial or territorial plan to implement “the uniform corrective measures” contained in section 23. The Council, however, did not accept our suggestion, some of its members no doubt preferring to deal with the issue solely in the context of their own jurisdictions.

Meanwhile, the exchanges of views between the principal parties concerned and successive Commissioners during their travels around the country continued to advance their thinking on this issue. Our discussions about it with the ministers of education of most of the provinces and territories and with most of the premiers, as well as the attention directed to these issues in our annual reports to Parliament, seem to have had some impact. They also confirmed in our eyes the need to undertake a general study of the scope of section 23 and of the problems involved in implementing it in Canada. The Office of the Commissioner wished to fill in the gaps resulting from the essentially fragmentary nature of the information currently available, make available to all parties concerned — provincial and local school officials, parents and minority groups, judges and counsel, researchers and others — a set of data and analyses that would facilitate the exercise of the educational rights of minorities.

In view of her training, multidisciplinary expertise and marked interest in problems of this nature, we entrusted this study to Angéline Martel. We asked her to elucidate the meaning and scope of section 23, with the assistance of constitutional experts who would do an analysis of the jurisprudence, to describe the current situation with respect to minority education in each jurisdiction and to define the elements essential to minority school administration, as well as the various methods of exercising it, so as to provide information to guide the activities of those working in this complex and vital area¹.

When she began her work three years ago Angéline Martel had just left her position as professor at the University of Alberta to work in the Faculty of Education at McGill University. She is now a professor of sociolinguistics and applied linguistics at the Télé-Université du Québec in Montreal and has been able to turn her extensive knowledge of minority education and issues involving language and minorities to good account.

In the course of her research Ms. Martel also called upon the assistance of experts in demographics and demolinguistics. The data in the study have also been the subject of numerous consultations and checks with, for example, departments of education. With the author's approval, in the fall of 1989 we submitted her research to validation by her peers in order to ensure the methodological quality of the work and its conclusions. The research benefited from the judicious comments that we received, particularly from Réjean Lachapelle

of Statistics Canada, Stacy Churchill of the Ontario Institute for Studies in Education and Lionel Desjarlais of the Faculty of Education of the University of Ottawa.

We were particularly pleased with the initiative taken by the Commission nationale des parents francophones in asking the author to develop a training kit on Section 23 and school management since this ensures that a large number of parents will have access to the results of the study, thereby considerably increasing its usefulness. As the holders of the rights guaranteed by section 23, they alone are entitled to enrol their children in a minority school and afford them the benefit of these rights. As for the English-speaking community in Quebec, it will be the responsibility of an organization such as Alliance Québec to determine whether this valuable work should be made more available to its members in an appropriate manner.

We very much hope that the publication and dissemination of this work² will contribute to a more informed exercise of education rights by official language minorities everywhere in Canada. We accordingly hope that on April 17, 1992, the tenth anniversary of the Canadian Charter of Rights and Freedoms, substantial achievements, worthy of the spirit that inspired it, can be celebrated.

D'Iberville Fortier
December 5, 1990

Notes

1. The structure of the resulting work is set out in the Introduction.
2. This study, sponsored by the Office of the Commissioner of Official Languages, represents the views of the author and not necessarily those of the Commissioner or of his advisors.

ACKNOWLEDGEMENTS

I wish to offer my sincere thanks to the many individuals who participated in the data gathering, analysis and production of this document. Their expertise and support were much appreciated. Chantal Ouellet (University of Quebec at Montreal) and Nathalie Lussier (McGill University) helped with documentary research. Gérald Beaudoin (then professor at the University of Ottawa), Tim Christian (University of Alberta), Paul Dubé (University of Alberta), Pierre Foucher (University of Moncton), Michel Paillé (Conseil de la langue française) and Pierre Trudel (University of Montreal) participated in consultations or commissioned research. Many other individuals and association representatives contributed their knowledge of the situation in each province and territory. All expressed great interest in our work. Jean-Claude Leblanc of the Office of the Commissioner of Official Languages kindly provided helpful comments. Finally, Nathalie Lussier was responsible for editorial production, assisted by Suzanne Desharnais and Daniel Villeneuve.

Angéline Martel, Ph.D.
Montreal, February 1990

INTRODUCTION

Following proclamation of the Canadian Charter of Rights and Freedoms on 17 April, 1982, in particular section 23 on "Minority Language Educational Rights", the range of claims by official language minorities has reached unprecedented proportions. The minorities, supported by the Charter, appear more determined than ever to ensure their survival and vitality. Among the rights demanded, those to instruction and management of school facilities have been the subject of a many community and legal initiatives.

Their demands deal with several issues. First, in minority communities across Canada, associations and interest groups are trying to help people, especially parents, make decisions by disseminating information on matters relating to assimilation and growth. The provincial and federal governments are receiving more and more petitions pressuring them to adopt a management structure designed to ensure the survival of official language minorities and respect for their rights. In the legal field, an array of cases is before the courts across the country. From 1982 to 1990, judgments were handed down in ten cases based on the rights of official minorities under section 23 of the Charter, and six others are being prepared or awaiting decision¹. This means 16 cases in all attempting to define official language minority rights or to accelerate their implementation through education systems which take account of minority needs. The Court Challenges Program, managed since 1985 by the Canadian Council on Social Development, plays a key role through its funding of such cases.

This is the context in which this study attempts to determine the situation across Canada with special reference to the rights to instruction and school management conferred on official language minorities. More particularly, it provides precise data on the current and potential situation of minority instruction and school management. It also describes the changes that occurred mainly between April 1982 and February 1990 and, as a reference work, fills a gap by presenting an overall picture of the situation across Canada.

The study also attempts to provide guidance for those² most involved in the promotion of official language minority education rights. It is designed to increase understanding, in society as a whole, of the education rights proclaimed by section 23 of the Charter and to help the allies of minority education in every province and territory to better define the issues and objectives involved. That is why we have chosen to present our documentation in a pedagogical manner, with summaries, summary tables and questions for discussion.

* * * * *

Chapter I provides a summary of interpretations given by the courts to section 23 of the Charter. After collecting and analysing judgments handed down since 1982, we arranged a meeting in Montreal, on April 15 and 16, 1989, to update and examine this in depth. Under the auspices of the Canadian Council for Social Development and the Office of the Commissioner of Official Languages, constitutional experts, legal scholars and members

of community and governmental organizations attended this meeting to gain a better grasp of the current situation. The outcome of the meeting is given below.

In Canada, decisions in education are a provincial matter. This means that each province has its own school system formed by history, immigration, the size of its territory, the demands of different groups, laws and political affinity. We have documented each provincial school system. Within each, a sub-system covering instruction and management will have to be created for the minority. Chapter II gives an overview of the state of instruction and school management for official language minorities as well as an historical, statistical and systemic description for each province and territory. In addition to providing this previously unpublished material, Chapter II brings together data hitherto available only from multiple sources scattered throughout each province.

The methodology for Chapter II involved collecting documents, holding interviews and checking facts with provincial education ministries and minority organizations. We also conducted a demolinguistic study to assess the number of children eligible according to the criteria set out in paragraph 23(1)(a) and to determine the type of services required in programs and schools reserved exclusively for the minority.

Chapters III and IV deal mainly with the issue of school management. We first examined all the management models proposed or in force since 1980, and then analysed majority school management models to categorise the components and functions involved in school management. These were then adapted to minority education needs and objectives to provide evaluation criteria which could be used to analyse models devised for minority education to ensure they were equivalent to majority management as required by section 23. This information was summarized on an evaluation grid, and minority management models were then analysed using the grid to determine the benefits and disadvantages. This analysis provides concrete tools for informed decision-making. Finally, the analyses and conclusions were validated with provincial and territorial government representatives, leaders of minority organizations, specialists and parents.

Chapter V lists the gains made in recognition of rights between 1982 and 1990. We then turn the future with an estimate of the number of children eligible for instruction in 1992 as well as recommendations designed to offer guidance to those involved in this issue.

* * * * *

Some of the terms used in the study require clarification. "Minority" and "majority" recognize first that the social operation of an education system is based on a numerical value, the "where numbers warrant" of section 23. For a given group, being a minority or a majority in a province or territory means, in essence, being more or less numerous. On the other hand, belonging to a minority also means belonging to a community united by cultural and historical ties different from those of the majority. Lastly, the terms "minority/majority"

imply a power relationship that underscores the disadvantaged position of the minorities vis-à-vis the majority (Van Amersfoort, 1978). This relationship comes into play when a group seeks to obtain instructional and school management services. Although this should not be the case for Canada's official language minorities, which benefit from constitutional rights in education under section 23 of the Charter and equality rights under sections 16-22, in reality the power relationship is always present. Nonetheless, the term "minority" in this study is in no way synonymous with "dominated" or "disadvantaged".

The culture which underlies the linguistic and community development of a minority encompasses several concepts. Bauman (1973) notes that its first sense is that of "cultivated", as in the expression "culture is what remains when everything else is forgotten" (Herriot). In this sense, culture, in the context of an education system, is program content: the study of Molière, Louis Riel, Gabrielle Roy and Antonine Maillet; and the study of history, including that of the Francophone or Anglophone (Quebec) community of the province or of Canada.

A second meaning of the word "culture" is concerned with the differences between groups: their different attachments, customs, values and language. This is the sense usually given to the word in the minority/majority context. From this perspective, provincial education programs must be enriched to reflect such differences.

A third sense given to "culture" designates the way groups organize themselves to give meaning to their life and reality. The school and education system help build a group's values system since culture is developed and lived every day. From this perspective, school management is part of the concept of culture and is especially important at a time when members of the minority are making choices based on their needs and values. Members of minorities thus become the agents of their own culture in making day-to-day decisions. In the school itself, culture defines the quality of school life by encouraging the individual and the community to flourish.

Culture is therefore central to notions of instruction and school management. It not only gives direction to their content and specificity, it supports the inner dynamic of the minority group. In this study, and depending on the context, the word "culture" has one of the three meanings given above: culture as knowledge, culture as difference or distinctiveness, and culture as everyday decision-making.

Notes

- 1 The cut-off date for research results and events described in this study is February 15, 1990. However, given the capital importance of the 15 March 1990 Supreme Court of Canada decision in *Mahé et al. v. The Queen*, Appendix B contains a summary of this decision and an analysis of its implications for our study.
- 2 Minority parents and associations, school administrators, representatives of the provincial, territorial and federal governments, jurists and researchers.

CHAPTER I

Jurisprudence: section 23 of the Charter

CHAPTER I

JURISPRUDENCE: SECTION 23 OF THE CHARTER

I. OBJECTIVES OF SECTION 23 OF THE CHARTER

A. Background prior to 1982

B. Objectives since the advent of the Charter

II. INTERPRETATION OF SECTION 23 BY THE COURTS

A. Eligible parents

B. Right to instruction

C. Right to facilities

D. Right to management

E. Equality of services

F. Where numbers warrant

III. CONCLUSIONS

IV. SUMMARY

This chapter sets out the legal framework for our study by describing the education rights that section 23 of the Canadian Charter of Rights and Freedoms conferred on official language minorities in 1982. We try to determine their specific characteristics so that our subsequent analyses are properly based on the jurisprudence.

We begin this chapter by describing the origins and objectives of section 23 so as to illustrate the spirit that drives it. We then present the essentials of section 23 and, for each of the issues it has raised, we refer to the text itself. We then summarize the interpretations that the courts have given to each issue. Lastly, we outline the parameters used in our analyses of instruction and school management.

I. OBJECTIVES OF SECTION 23 OF THE CHARTER

Section 23 of the Canadian Charter of Rights and Freedoms (Appendix A) is the outcome of an historical process that has marked both its wording and its spirit. A summary of the origins of section 23 is necessary if one is to describe its objectives and show what lay behind its elaboration.

The entrenchment of minority language education rights is a relatively recent phenomenon. Religious minorities were the first to benefit from the recognition of rights to instruction and school management. The Constitution Act, 1867, entrusted education to the provinces while guaranteeing the rights of religious minorities. Subsections 93(1) and 93(2) specify as follows:

- (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:
- (2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

By confirming the rights of the religious minorities relative to schools and school management, the Act in fact protected the linguistic character of these minorities at the time of Confederation. Catholics were for the most part Francophone while Protestants were generally Anglophone (Beaudoin, 1987).

Yet this reality was not to be recognized in a strictly legal sense. A 1917 Ontario decision (*Ottawa Catholic Separate School Trustees v. Mackell*) ruled that the "religion" category could not be subdivided into a "language" category. Section 93 therefore protected

only the rights of religious minorities. Five Canadian provinces are still bound today by section 93 (or similar sections). Alberta, Saskatchewan, Ontario, Quebec and Newfoundland¹ retain the protection afforded to religious minorities served by provincially supported schools at the time of their entry into Confederation.

A. BACKGROUND PRIOR TO 1982

The educational needs of official language minorities nevertheless became a matter of public discussion, particularly in Book II (Education) of the *Report of the Royal Commission on Bilingualism and Biculturalism* (1968), known as the B & B Commission. The Report stated that:

If the majority language is the sole language of instruction in the provincial schools, the survival of the minority as a linguistic group is menaced. Almost by definition a minority is exposed to the social environment in which the majority language is always present. The school must counterbalance this environment and must give priority to the minority language if the mother tongue is to become an adequate instrument of communication. Language is also the key to cultural development. Language and culture are not synonymous, but the vitality of the language is a necessary condition for the complete preservation of a culture. (p. 8)

For the B & B Commission, the minority school had two objectives: to enable acquisition of a language as an effective means of communication; and to ensure the continuation of the group by providing a socially and culturally stimulating environment for official language minorities. These two objectives, frequently restated and presented in different forms, are at the heart of the background to section 23 of the Charter.

The participants at the February 1971 constitutional conference issued a statement on minority language education rights. There was agreement that anyone had the right to receive a publicly funded education “principally” in the minority language. Such education should be offered in bilingual districts within regions designated as having a “sufficient number” of individuals who had chosen education in the minority language to justify providing “necessary facilities”. Two of the key terms in section 23, “public funds” and “sufficient number”, are already in evidence. The spirit of this statement remains that of giving the linguistic minority rights to education in its language.

It was only in 1977, however, at the 18th conference of provincial premiers held at St. Andrews, New Brunswick, that the following points were expressly recognized:

Recognizing our concern for the maintenance and, where indicated, the development of minority language rights in Canada; and

Recognizing that education is the foundation on which language and culture rest;

The Premiers agree that they will make their best efforts to provide instruction in education in English and French wherever numbers warrant. (*Statement on Language*)

These words, cited among others by Justice Wimmer in *Commission des écoles fransaskois et al. v. A.G. Saskatchewan* (1988), were interpreted as an intention to give the minorities education rights equivalent to those of the majority.

A press release issued at the provincial premiers conference the following year (1978) confirmed the position taken at St. Andrews. Participants again recognized that education was the foundation for language and culture. They stated that every *child* belonging to an official language minority had the right to an education in his or her language, in primary and secondary schools, wherever numbers warranted.

Subsequently, the federal government adopted Bill C-60 and published *A Time for Action* (1978), a document on constitutional reform in which the issue was protection of the English and French language minorities and the right to education "where numbers warrant". The time was one of concern with national unity and it was clearly stated that unity would be possible only through respect for diversity and the linguistic equality of the founding peoples (Kerr, 1983).

These historic events were all part of the same movement toward recognition of the education rights of the linguistic minorities. In 1982, this movement was based on three objectives: (1) national unity through (2) a similar educational framework for Anglophone and Francophone minorities in order (3) to enable them to flourish linguistically and culturally.

The history underlying section 23 can thus be summarized by saying that the general objective was to encourage the linguistic and cultural vitality of the official language minorities. The Minister of Justice of the day stated before the Special Joint Committee on the Constitution:

...and we are also seeking to protect, once and for all, the education rights of Francophones outside of Quebec.

The aim of this initiative is to provide Francophones outside Quebec with approximately the same rights as the Anglophones in Quebec enjoy, or once enjoyed. (1980)

The similarities between section 23 of the Charter and chapter VIII (sections 72 and 73) of Quebec's Bill 101 indicate, however, that the fate of Quebec's Anglophone minority and the question of freedom of choice of the language of education for minorities were also at the heart of the debate. Bill 101 made Quebec the only province which, in 1982, had clearly established criteria for access to instruction in the minority language. Some English-speaking

provinces (in particular, Newfoundland and British Columbia) had no legislation on the language of instruction (Monnin, 1983).

B. OBJECTIVES SINCE THE ADVENT OF THE CHARTER

The judgments handed down since the advent of the Charter have confirmed and clarified the initial objectives of section 23. In 1984 the Supreme Court of Canada, while confirming that the objective contemplated is the vitality of official language minorities, issued two clarifications. First, section 23 should create a uniform framework designed to enable the official language minorities to flourish across Canada. This objective is an attempt, despite exclusive provincial jurisdiction over education, to provide similar conditions for official language minorities in every province and territory. The second clarification established that the measures stemming from section 23 should remedy an historical situation leading to the assimilation of minorities. The Supreme Court of Canada stated:

...the framers of the Constitution manifestly regarded as inadequate some — and perhaps all — of the regimes in force at the time the Charter was enacted, and their intention was to remedy the perceived defects of these regimes by uniform corrective measures, namely, those contained in s. 23 of the Charter, which were at the time given the status of a constitutional guarantee. (*Québec Association of Protestant School Boards v. A.G. of Québec*, 1984, (pp. 331-332)

Thus section 23 not only confers rights on the minorities with respect to their vitality; it also recalls that these minorities — especially the Francophone minority, as noted by the Court — have suffered from an historical situation which must be corrected.

We may conclude that section 23 seeks not only to ensure the survival but also the vitality of official language minorities through an educational framework which will stop assimilation. It recognizes the fundamental role education plays in this process. By advocating “remedial measures”, section 23 must provide for an effective education system consistent with these objectives. The provincial premiers², through their acceptance of the Charter, have committed themselves to implement such a system, one aimed at uniform treatment of official language minorities across Canada.

Moreover, since the advent of the Charter of Rights and Freedoms, the Government of Canada has consolidated these provisions in the Official Languages Act which came into force on September 15, 1988. In particular, under the terms of section 41, the government is committed to promoting the language and vitality of the official language communities. Specifically, section 41 stipulates:

41. The Government of Canada is committed to (a) enhancing the vitality of the English and French linguistic minority communities in Canada and

supporting and assisting their development; and (b) fostering the full recognition and use of both English and French in Canadian society.

Section 43 confirms this orientation by giving the Secretary of State of Canada the right to take such measures as he considers necessary to "advance the equality of status and use of English and French in Canadian society". Such measures include support to provincial governments to allow minorities to receive instruction in their language:

43. (1) (d) encourage and assist provincial governments to support the development of English and French linguistic minority communities generally and, in particular, to offer provincial and municipal services in both English and French and to provide opportunities for members of English or French linguistic minority communities to be educated in their own language.

II. INTERPRETATION OF SECTION 23 BY THE COURTS

Section 23 of the Charter has been subject to interpretation by the courts since 1982. Judgments have been rendered in 13 proceedings³ and sufficient information is now available to trace the guiding principles which form the basis for implementation of section 23 rights. Six decisions have come from lower courts, six from provincial appeal courts, including three constitutional references, and one from the Supreme Court of Canada. Table I-1 gives a chronological summary by province. This section will deal with the various aspects concerning official language minorities: eligible parents; the right to instruction; the right to facilities; equality of services and the "where numbers warrant" limitation. Our observations are based on an analysis of the arguments contained in the judgments, commissioned research (Foucher, 1988; Trudel, 1988) and the discussions and presentations (Gérald Beaudoin, Tim Christian and Jean-Pierre Proulx) at the meeting on section 23 held in Montreal on 15-16 April 1988.

Table I-1

Chronological summary of judgments on section 23, by province

1982	1983	1984	1985	1986	1987	1988	1989	1990
B.C.					<i>Whittington</i> B.C. Superior Court			
Alta.			<i>Mahé</i> Court of Queen's Bench		<i>Mahé</i> Court of Appeal			<i>Mahé</i> Supreme Court of Canada
Sask.						<i>Commission des écoles fransaskoises</i> Court of Queen's Bench		
Man.								<i>Reference</i> Court of Appeal
Ont.		<i>Reference</i> Court of Appeal		<i>Marchand</i> Ontario Supreme Court				
Que.	<i>QAPSB*</i> Superior Court		<i>QAPSB</i> Supreme Court of Canada					
N.B.		<i>SANB**</i> Court of Queen's Bench						
P.E.I.						<i>Reference</i> Court of Appeal		
N.S.					<i>Lavoie</i> N.S. Supreme Court		<i>Lavoie</i> N.S. Court of Appeal	

* Quebec Association of Protestant School Boards

** Société des Acadiens du Nouveau-Brunswick

The criteria governing the generosity or restrictiveness of application of section 23 can be determined only through an examination of the interpretations given the section. The main issue is as follows: should the rights guaranteed be interpreted liberally and generously or

should they be limited to their provincial context, in other words to derivation from a so-called “political compromise”? The answer depends on the perspective adopted by the judges. Opinions are mixed but oscillate between the two poles underlying the judicial arguments: an objective designed to ensure the vitality of official language minorities and a compromise which seeks to respect provincial jurisdiction over education. This section will trace chronologically how interpretations relative to this issue have evolved.

Four Supreme Court of Canada decisions have influenced the interpretation of section 23. The first, in *Québec Association of Protestant School Boards v. A.G. of Québec* (1984), directly concerned section 23 and adopted a “teleological” method: the interpretation bore in mind the objective contemplated when this section was formulated. Thus the Court determined that the section contained “a unique set of constitutional provisions” (p. 331) designed to encourage authorities to take measures to modify existing systems found to be deficient. The Ontario Court of Appeal in *Re Minority Language Education Rights* (1984) closely followed this orientation by declaring the need to interpret section 23 in a broad and liberal manner in keeping with its original objective.

The second and third Supreme Court of Canada judgments of interest, while not concerned with minority rights as such, have had a general influence on the interpretation of constitutional rights. These decisions relate to section 8 (protection against search or seizure) and section 2 (freedom of conscience and religion) of the Canadian Charter of Rights and Freedoms. Chief Justice Dickson, in *Hunter v. Southam* (1984) and *R. v. Big M Drug Mart Ltd* (1985), developed an interpretation based on the initial objective of these rights. He concluded that such an approach must be remedial and generous rather than legalistic. To illustrate the role played by any constitution, he used a metaphor of a living tree which grows and blooms within its natural limits. A restrictive interpretation would lead to atrophy of the Constitution. The Alberta Court of Queen’s Bench judgment in *Mahé et al. v. the Queen* (1985) acknowledged being inspired by this interpretation.

In contrast, Mr. Justice Beetz, in *Société des Acadiens du Nouveau-Brunswick et al. v. Minority Language School Board no. 50 et al.* (1986), considered that the language rights defined in sections 16-22 of the Charter were the outcome of political compromises and must consequently be subject to a cautious interpretation. The courts, he said, must hesitate before becoming instruments for change. Mr. Justice Beetz thus influenced the thrust toward generosity and modified the interpretation of judgments given up to that point. His judgment, as influential as those preceding it, put forward arguments that were more restrictive and attentive to the provincial context. Justice Kerans of the Alberta Court of Appeal was greatly influenced by this judgment when he argued that section 23 is the result of political compromise. Justice Wimmer of the Saskatchewan Court of Queen’s Bench (1988) also took up this restrictive interpretation.

The decision in *Prince Edward Island Education Rights Reference* (1988) attempted to reconcile the two interpretations by setting out four summary principles from previous

judgments:

1. section 23 takes account of existing provincial systems involving minority instruction;
2. section 23 is intended to remedy defects in these systems;
3. the objective of section 23 is to provide full protection for the minority;
4. section 23 is a political compromise and must be treated with caution.
(p. 19)

The judgment tried to establish a balance by taking into account both the objective contemplated and the political compromise. Justice Wilson, in *Reference on Funding Catholic Schools in Ontario*, (1987), had adopted the same attitude:

“While due regard must be paid not to give a provision which reflects a political compromise too wide an interpretation, it must still be open to the Court to breathe life into a compromise” (p. 23).

In his comments in the *Constitutional Reference* (1990), Justice Twaddle⁴ of the Manitoba Court of Appeal explained his view of the nature of the political compromise. In his opinion, the provincial compromise consists in accepting the obligation to provide educational services to the official language minority:

Section 23 undoubtedly limits provincial autonomy in the field of education. The provincial majority can no longer deny a French-language education to the children of the linguistic minority. (p. 38)

The meaning of the expression “political compromise” is thus slightly modified. It is no longer a question of limiting minority rights because education is within provincial jurisdiction, but rather of limiting the rights of the provinces and territories by requiring them to provide educational services to their official language minority. However, the words used in section 23 are sufficiently “vague and imprecise”, in Justice Twaddle’s words, to allow the provinces and territories the necessary flexibility in each of their unique situations.

In 1989 the Nova Scotia Court of Appeal returned in its judgment to a broad and liberal interpretation. Justice Clarke rejected the political compromise interpretation. He declared that section 23 is distinct from the linguistic rights conferred by sections 16-22 of the Charter and must be interpreted in a broad and liberal manner. Justice Monnin of the Manitoba Court of Appeal (1990) also argued for a “generous and liberal” interpretation.

The broad and liberal interpretation of rights conferred by the Charter was highlighted by the February 1989 decision of the Supreme Court of Canada in *The Law Society of British*

Columbia et al. v. Mark David Andrews et al. The judgment, relating to section 15 (equality), reinstated the idea of applying a “broad and liberal” interpretation of rights conferred by the Charter. Cases involving interpretation of section 23 also draw upon section 15 and especially subsection 15(2), the “affirmative action” section, allowing “any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups”. Justice Clark of the Nova Scotia Court of Appeal also drew upon this subsection in confirming the legitimacy of the provincial statute on Acadian schools. Finally, Justice Monnin gave importance to section 15 when he declared that Manitoba Francophones were victims of discrimination. In his opinion Manitoba must, under this section, grant the right to full management.

The interpretation of section 23 has therefore undergone an important change since the first court decision in 1984. From a generous orientation stemming from the decision regarding the Anglophone minority in Quebec and that in the Ontario *Reference* on the Francophone minority in Ontario, it became restrictive and concerned about provincial and territorial jurisdiction and authority in education. Judicial argument, initially centred on minority rights and needs, gradually changed to become more mindful of reconciling these objectives with those of provincial and territorial governments.

A. ELIGIBLE PARENTS

Since section 23 contemplates a specific objective, the vitality of official language minorities, it clearly identifies the categories of persons upon whom rights are conferred. Two types of criteria in section 23 can be distinguished. The first three are general in nature and must all be met; the second are linguistic and meeting any one confirms eligibility.

The first general criterion relates to *Canadian citizenship*. As specified in subsection (1), only Canadian citizens have rights under section 23.

A second general criterion specifies that rights are conferred on citizens *residing in a Canadian province*⁵. Thus subsections (1) and (2) specify place of residence.

Subsection 23(1) also confers rights on *citizens with school-age children* — elementary or secondary. Thus the beneficiaries⁶ of the rights are the “parents” or the parent, and not the children, even though the word “parent” does not appear in the section.

The linguistic criteria concern three categories of persons. First, the parent “whose first language learned and still understood is that of the...minority...” receives rights under paragraph 23(1)(a)⁷. This, moreover, is how Statistics Canada defined mother tongue in 1981⁸. The mother tongue definition is thus precise and relates essentially to an individual’s language of initial socialization.

The second linguistic criterion, set out in paragraph 23(1)(b), relates to the *parent’s language of instruction at the primary level*. A parent who has received primary school instruction in

the minority language in Canada has the right to have all his or her children educated in that language.

Finally, subsection (2), which includes a third linguistic criterion, specifies that section 23 also applies to parents *where one child in the family has received or is receiving primary or secondary instruction in the minority language*. This is the only criterion directly concerning the child, but rights are conferred through the parent. The categories of persons covered by section 23 are summarized in Table I-2.

Thus while section 23 confers rights on individuals, the categories of persons specified are inspired by a community view of the minority. In going via parents in order to provide rights to educational services for children, who thereby become “eligible children”, section 23 encourages transmission of the minority language from one generation to another.

Table I-2
Eligible parents under section 23 of the Charter

General criteria (mandatory)
1. Canadian citizen, born in Canada, subsection 23(1)
2. Resident in a Canadian province where the language is that of the minority, subsections 23(1) and 23(2)
3. Parent, subsection 23(1)
Linguistic criteria (meeting one criterion is sufficient)
1. First language learned and still understood by the parent, paragraph 23(1)(a)
2. Parental language of instruction at the elementary level, paragraph 23(1)(b)
3. Language of instruction of one child in the family, subsection 23(2)

Except for the Supreme Court of Canada in *Quebec Association of Protestant School Boards v. A.G. of Québec* (1984), the decisions rendered since 1982 are not generally concerned with section 23 eligibility. Given the similarities between sections 72 and 73 of chapter VIII of Bill 101, adopted in 1978, and section 23, it is clear that the latter was drafted in the light of Bill 101. This was confirmed by the Supreme Court of Canada⁹. By replacing the territory of Quebec by that of Canada, the Court defined the minority eligible for rights under section 23 as existing everywhere in Canada. In practice, the Court considered that Anglophone parents who had received their elementary education in Canada (Canada clause) are eligible for instruction in English as a minority language even though section 73 of Bill 101 conferred these rights only on parents who had received their elementary education in Quebec (Quebec clause). The same clarification was applied to the language of instruction of a brother or sister. Finally, the Supreme Court concluded that “the categories were immutable and that their modification would strike at the very substance of the rights conferred” (pp. 337-338).

The same year (1984), the Ontario Court of Appeal clarified another aspect of section 23, the child's mother tongue. It declared that subsections 258(2) and 261(2) of Ontario's Education Act were incompatible with section 23 because they refer to the language spoken by the child. "It can be seen that in the *Charter* there is no requirement that children, in order to be entitled to receive instruction in the French language in Ontario, must themselves be French-speaking" (p. 42). This clarification confirmed the linguistic heterogeneity of eligible children and indicated that institutions would have to respond to the needs both of children who already speak the minority language and those who have been assimilated into the majority language.

In 1988, in *Prince Edward Island Education Rights Reference*, the Court confirmed again that rights are conferred on parents and not on children. Justice Wimmer of Saskatchewan (1988) added in his judgment the words "parents or guardians" to indicate that the rights conferred on parents are also conferred on persons acting *in loco parentis*.

In 1989, Justice Clarke of the Nova Scotia Court of Appeal adopted a middle-of-the-road position by holding that the Charter and provincial laws complemented each other. He considered that the Acadian Schools Amendment is not unconstitutional because it confers rights on children speaking the minority language. In his opinion, the amendment, together with section 23, provides complete coverage of minority rights — those of the parent and those of the child.

In 1981, the eligibility criteria for rights conferred by section 23 were clear with regard to the definition of mother tongue. However, in 1986, Statistics Canada stopped defining mother tongue as one language only¹⁰ and as a result a new constitutional issue arose. We know that eligible parents under section 23 are eligible by virtue of mother tongue. But are they still eligible if the mother tongue is one of two or even three mother tongues? This is a question that the courts may have to decide¹¹.

This description of the beneficiaries of section 23 rights provides several criteria for defining the parameters of the remainder of the study. First, the number of eligible children under section 23 must be calculated starting from the number of eligible parents. These parents must meet the following criteria: (1) be Canadian citizens, (2) reside in a Canadian province or territory, (3) be of the minority mother tongue (whether this be the only, second or third mother tongue).

B. RIGHT TO INSTRUCTION

Section 23 is entitled in French "Droits à l'instruction dans la langue de la minorité". However, the English title, "Minority Language Educational Rights", reflects a clear *educational* objective and completes the meaning of the French term with the sense it has acquired in the jurisprudence. The word "education" is wider than the word "instruction" and indicates a body of services for the minority. However, within such services, instruction

plays a preponderant role relative to the rights given to official language minorities. It represents a specific aspect of rights, distinct from linguistic rights and other constitutional guarantees under the Charter.

The right to instruction in the minority language is defined generally in subsections 23(1) and 23(2) and specifically in paragraph 23(1)(a). The text of these sections clearly shows that the right is to *primary* and *secondary* instruction¹². The meaning of the right is made clear by the following terms found in the text: “instruction”, “faire instruire” and “enseignement”. In the English text, “instruction” and “educational” are used. We turn now to how the courts have interpreted these terms.

The word “instruction” and its synonyms, “instruct” and “education”, are part of everyday vocabulary. For the purposes of section 23, it is generally accepted that instruction must be in the mother tongue. This means that this is not a matter of a right to a second-language program such as French or English (Quebec) immersion. Four decisions have made it clear that instruction “in the language of the minority” does not mean “immersion” instruction. In the first of these, Justice Richard, in *S.A.N.B. v. Minority Language School Board no. 50 et al.* (1983), explained that immersion concerns the majority rather than the minority enrolment. Immersion programs are designed to achieve a high (functional) level of French-language skills, but when they begin pupils have no practical knowledge of the language. He concluded, moreover, that “School boards have the power and the duty to refuse access to their immersion programmes to pupils who are already able to function in the language to be used in the program” (p. 408).

In a second judgment, Justice Purvis of the Alberta Court of Queen’s Bench (1985) noted, in *Mahé et al.*, the difference between immersion and “a significant language instructional experience” for the Francophone minority. He declared that “instruction in the minority language” is instruction in the mother tongue (“French as a primary language”). This is akin to the interpretation of Justice Richard in New Brunswick.

Likewise, the Ontario Court of Appeal (1984) noted, in an earlier judgment, that given the enrolment eligible under section 23, instruction is not necessarily being delivered to children of French mother tongue and that appropriate programs, not immersion programs intended for majority children, must be established to convey minority values.

Finally, the decision in *Whittington v. Board of School Trustees of School District No. 63, Saanich, British Columbia* (1987), confirmed that section 23 does not give Anglophone majority children a right to French immersion programs.

In addition, the Ontario Court of Appeal (1984) noted that “instruction” must include, “apart from the requisite teachers and teaching materials, either classrooms or other physical facilities, like television, for such instruction”. The decision of the Alberta Court of Appeal (1987) also helped determine if “instruction” in paragraph 23(3)(a) has a wider meaning

than just the choice of the language of teaching. The decision refers to effective (“real”) instruction in the light of the objective contemplated by section 23 interpreted in its historical and political context (fluency in the language of, and full participation in the life of, the minority community). Instruction must, as the decision noted, meet the following requirements:

- be more than just a course in conversational French;
- involve special qualifications for staff and special rules for staff selection;
- offer programs in French in other subjects;
- provide for the administration to be French;
- be provided in an environment set apart from the majority language;
- establish close ties between parents and local Francophone institutions;
- encourage participation in school matters (pp. 39-40)

The Court thus interpreted the right to instruction as a right to a complete education by and for the minority: “...the right is to receive this language training without dilution of education in other matters”. (p. 33) Justice Kerans here quotes Justice Sirois (1986) in the *Marchand* case in Ontario. Section 23 offers a complete education, not an “inferior” or “second class” education. By interpreting the term “instruction” in reference to the objective of section 23, the Alberta Court of Appeal established a direct link between the section’s application and its effectiveness.

The Prince Edward Island decision (1988) maintained this orientation and, while endorsing the Alberta Court of Appeal interpretation, added that instruction also means participation in management.

As a minimum those persons entitled to minority language instruction would be entitled to receive that instruction in appropriate accommodation, from teachers fluent in the minority language who have been provided with the appropriate teaching materials. (p. 57)

Minority language instruction must imply the right to participate in program development and delivery. (p. 53)

The Nova Scotia Court of Appeal (1989) also stated that the right to instruction involves, at a minimum, teachers, classrooms, textbooks, supplies, audio-visual equipment, etc.

The courts have thus ruled that the term “instruction” is clearly different from immersion and, in order to achieve the objective contemplated, covers a body of pedagogical and administrative measures, including human and physical resources. However, the Prince Edward Island Court of Appeal (1988) was reluctant to define more precisely the standards required to give effect to the right to instruction. According to the Court, this is an area which remains within the jurisdiction of the provincial legislatures.

Lastly, the text of section 23 explicitly states that minority instruction must be provided from public funds. The courts have not yet had to consider this matter. However, the letter, like the spirit, of section 23 provides for programs of instruction funded by the state on the same basis as those intended for the majority.

The various interpretations of the right to instruction in the minority language determine three further parameters for this study. First, the various minority instruction programs, bilingual, partial or full, will be selected for a preliminary analysis. Immersion programs will therefore not be included. Second, since instruction is provided at both primary and secondary levels, programs from the first to the twelfth year of study or equivalent will be analysed. This means that the age of the eligible children analysed will be between six and seventeen. Third, the instruction concerned must be publicly funded. This will define the type of funding for programs that respond to the rights conferred under section 23. Thus, Chapter II will examine public programs of instruction for official language minorities. Programs run by private institutions in Quebec, which are subsidized up to 80% by public funds, will be studied separately in the Quebec section of Chapter II.

C. RIGHT TO FACILITIES

The term “minority language educational facilities” appears in paragraph 23(3)(b). The word “facility” designates two areas of application and much ink has been spilt about its interpretation. The first area, dealt with in this section, concerns physical facilities; the second, examined in the following section, relates to school management.

A fairly broad consensus has emerged from the judgments. In general, “facility” is interpreted as “school” when the number of minority children is judged sufficient. Yet the issue is not so easily resolved. In the opinion of Justice Kerans of the Alberta Court of Appeal, for example, there are several variants: classroom, school, separate building, school administration, province-wide system, and so on.

Moreover, as the Ontario Court of Appeal noted, instruction must be offered in a distinct physical location in homogeneous schools. “Facility” can therefore be interpreted, subject to where numbers warrant, as designating a school which is distinct from its counterpart providing instruction to the majority. This is in fact how courts in Ontario (1984), Alberta (1985), Nova Scotia (1988, 1989), Saskatchewan (1988), Prince Edward Island (1988) and Manitoba (Monnin, 1990) have interpreted the term. It should be noted that these courts have confirmed that, while separate facilities are required where numbers warrant, mixed facilities (classes in majority schools) may, given limited numbers, also give effect to section 23 rights.

The distinct character of minority facilities was set out by the Ontario Court of Appeal (1984):

...the educational environment will be that of the linguistic minority. Only then can the facilities reasonably be said to reflect the minority culture and appertain to the minority. (p. 62)

A last point concerns the linguistic homogeneity of minority schools. On the one hand, pupils in minority facilities are selected on the basis of section 23 eligibility criteria and form part of the minority through their parents or brothers and sisters. As the Ontario Court of Appeal (1984), the Saskatchewan Court of Queen's Bench (1988) and the Prince Edward Island Court of Appeal (1988) recognized, such pupils are not necessarily at ease in the minority language. On the other hand, Justice Richard of the Court of Queen's Bench confirmed, in *S.A.N.B. v. Minority Language School Board no. 50 et al.* (1983), that a mixed, so-called "bilingual" school which groups majority and minority children within one administrative structure cannot meet the objective of section 23:

the bilingual school, in the context of the province of New Brunswick, led a great number of children, mostly Francophones but Anglophones as well, towards assimilation on the one hand, and towards a degeneration of the mother tongue or dominant language on the other. This produced a "dialectic mixture common to colonized or assimilated peoples". (p. 381)

To halt assimilation and meet the objective of section 23, Justice Richard urged a system of homogeneous schools belonging to the minority.

The interpretation of "minority language educational facilities" as meaning a homogeneous school where numbers warrant leads to a more specific examination of the importance of this type of school in each province and territory (see Chapter II). The number of pupils in homogeneous schools [23(3)(b)] where numbers warrant will be contrasted with the total number in minority education programs [23(3)(a)] and a statistical table developed for services offered under these two paragraphs.

Further consideration of the characteristics of the term "minority language educational facilities" requires analysis of its second aspect: management.

D. RIGHT TO MANAGEMENT

It has been generally recognized since the Ontario Court of Appeal's judgment that the French meaning of "établissements d'enseignement de la minorité linguistique" in paragraph 23(3)(b) is broader than the English "minority language educational facilities". First, the "de la" particles indicate that the facilities belong to the minority. Second, the distinction made in section 23 between "instruction" and "facility" ("établissement") implies that the latter must not only mean the attribution of physical facilities but also the right to manage them. Section 23 thus implicitly grants the official language minorities a right to manage their educational facilities. Moreover, as noted by Foucher in 1988, "No judgment has yet

refused to read a right to management into section 23.” (p. 23) [trans.] However, in 1990, the Manitoba Court of Appeal was of a different opinion. Let us first examine the judgments prior to 1990.

The minorities’ grievances against majority school boards¹³ referred to by the courts in Ontario, Saskatchewan and Prince Edward Island provide a basic argument in favour of a right to school management. The Ontario Court of Appeal, for example, attributed a succession of unhappy consequences to the “lack of meaningful participation in management and control of local school boards by the Francophone minority” (p. 67). It pointed out:

It is part of the documented background of this reference that... there have been numerous instances in which French language communities in Ontario have requested that their local school boards provide them with their own schools and have been denied this right. (p. 37)

The argument accepted by the courts thus involves remedying an historical situation encouraged, according to the Ontario Court of Appeal, by majority school boards. A second argument touches upon the intrinsic reason for giving control of school management to the minorities: it has turned out to be the best guarantee against assimilation. Two decisions, quoted below, have examined the issue. The Prince Edward Island Court of Appeal observed that:

It would be foolhardy to assume that Parliament intended to give the French linguistic minority the right to receive their instruction in French but leave the sole control of the program development and delivery with the English majority. If such were the case, a majority language group could soon wreak havoc upon the rights of the minority and could soon render such a right worthless. (p. 53)

In somewhat different terms, Justice Kerans of the Alberta Court of Appeal accepted the plaintiffs’ argument that:

The most effective guarantee to prevent assimilation is a facility under the exclusive control of that group. Any diminution in that power inevitably dilutes the uniqueness of the school and opens it to the influence of an insensitive if not hostile majority. No doubt some elements of control must be yielded, as we will see, but each measure of control lost represents a potential weakening of the decision-making power, and opens the door to an undermining of the difficult role of the facility. (p. 36)

The effectiveness of minority facilities, given their purpose under section 23, requires, as the above citations point out, that the minority control its own education facilities.

The courts are not, however, in agreement on the scope of the right to management and, taking into account the issues they have had to deal with, there are important variations in their interpretations.

Does the minority have the right to manage and control its classes and educational facilities? After responding positively to this question, the Ontario Court of Appeal specified that the right to management given by the *White Paper* on proposed amendments to the Education Act (1983), appeared to comply with section 23 in that it provided the minority with guaranteed representation on local school boards and granted it exclusive power over its classes and schools, that is, over those aspects relating to their French character. More particularly, the Court listed the following decision-making powers set out in the *White Paper*:

- allocation of funds for instruction and facilities;
- appointment and direction of those responsible for administration;
- development of programs of instruction;
- recruitment and assignment of teachers and school staff;
- agreements concerning programs and services.

The Court also emphasized the province's responsibility for implementation of the right to management.

Justice Purvis of the Alberta Court of Queen's Bench in *Mahé et al.* (1985) declared, like the Ontario Court of Appeal, that the minority must be given some degree of management and control of programs and facilities. He also borrowed from the Ontario judgment in specifying the exclusive decision-making area noted above (p. 49).

The Alberta Court of Appeal, in answer to the question whether the Francophone minority had a right to an educational system as complete as that of the majority, stated:

In my view, s. 23(3)(b) guarantees to s. 23 students, where numbers warrant, an education system (with all its complexity and cost) that not only offers the same quality of education as other systems but is run by the minority language group or its representatives. (p. 36)

However, it is up to the province to determine the modalities for giving effect to the right since, according to the Court, this is a political matter. Moreover, it concluded that the "number" in Alberta is insufficient to warrant a complete management system like that of the majority.

The question posed to the Prince Edward Island Court of Appeal sought to confirm minority participation in program development and delivery. While noting that it was easier to answer this question than that posed in Ontario, which raised the right to control rather than to

participation, the Court responded positively by recognizing that the right to participation is indeed based on paragraph 23(3)(a) in the case of instruction and paragraph 23(3)(b) in the case of schools.

In contrast, Justice Wimmer in Saskatchewan considered that the right to management is only conferred on separate and autonomous facilities. If instruction is delivered in mixed classes, no particular right to management is given to the minority and it must content itself with advisory committees.

The Manitoba Court of Appeal's five judges agreed on only one finding in the *Constitutional Reference* (1990), namely that section 23 does not give the right to school management either explicitly in its text or implicitly in its spirit. The judges excluded the possibility of a partial right to control of management. This is clearly expressed by Justice Twaddle, supported by Justice Philp, who declared:

A transfer of the right of governance from the province as a whole to those of its linguistic minority would constitute a massive intrusion into provincial autonomy in the field of education. So massive would that intrusion be that I would expect to find it made by a constitutional amendment expressed in much clearer language than that found in section 23. (p. 39)

Justice Twaddle thus placed the official language minority on an equal footing with the Government of Manitoba and concluded that providing the minority with a right to management would negatively affect the Government's autonomy in educational matters.

In the same reference, Justice Monnin concluded that, while it may be desirable, the right to management is not explicitly given by section 23. However, since the rights conferred by section 15 have been violated, "the formation of a single provincial school district or division, the creation of multiple school districts or divisions, or ... any other appropriate method" (p. 70) which would provide school management could constitute a viable remedy.

Who are the beneficiaries of the right to management? The Ontario Court of Appeal specified that "all parents who qualify for s. 23 rights as well as those who benefit from the provision of these rights, but do not qualify" (p. 69) may exercise the right to management. On the other hand, according to the Alberta Court of Appeal, the Saskatchewan Court of Queen's Bench and the Prince Edward Island Court of Appeal, all members of the minority community may participate in management. In the first case, rights are conferred on *parents* while, in the second, they are conferred on all members of the minority community, parents or not¹⁴.

In the end, all the judgments stress that implementation of the right to school management is a provincial matter. Each province or territory must decide the most appropriate means or modalities for its particular situation. However, the right to management requires a reorganization of the school system and by this very obligation brings pressure to bear on

provincial legislatures. Thus, two opposing perspectives on the application of section 23 stem from the right to management issue: on the one hand, the historical situation to be corrected and the future vitality of official language minorities; on the other, the exclusive power of provincial governments over education.

The jurisprudence on school management and the objectives of section 23 provide the framework for the development, in Chapters III and IV, of an analysis of official language minority school management models (existing or proposed). We will present the basic requirements for implementation of a school management system by the minorities. These requirements take into account the difficulties noted above, that is, respect for provincial autonomy in education as well as for the objective of ensuring the vitality of official language minorities. It also includes the elements which must, at a minimum, be under minority control.

E. EQUALITY OF SERVICES

The rights conferred by section 23 raise the fundamental issue of equality between minority and majority services. More specifically, the issue, while not explicitly brought out in the text of section 23, involves the application of the rights and interpretation of section 23 in accordance with section 15, the equality section, of the Charter.

The principle of equality of services was a concern in the development of official language minority rights. In its document proposing constitutional reform, *A Time for Action*, the federal government stated:

The renewal of the Federation must guarantee the linguistic equality of its two major communities, the English-speaking and the French-speaking, and assure that Canadian institutions exist to help each group to prosper. (p. 9)

Since the equality of the linguistic communities is at the heart of the new constitution, the courts have agreed with the principle that official language minorities have the right to an education equivalent to that of the majority. This being said, however, different interpretations have arisen.

The Ontario Court of Appeal (1984) was clear:

The quality of education to be provided to the minority is to be on a basis of equality with the majority. (p. 71)

Minority linguistic rights should be established by general legislation assuring equal and just treatment to all rather than by litigation. (p. 100)

These declarations introduced three elements which were subsequently reconsidered in the light of other judgments. First, equality refers, quite concretely, to the quality of services.

The reference point remains the quality of services offered to the majority. Justice Sirois, in *Marchand* (1986), was quite clear on this point:

This means that the same education as is given the majority but in the other official language. *This is to be a full and complete education, not a limited, partial or truncated one, which necessarily would be an inferior education, a second class one.* (p. 38)

The principle of equality thus becomes equality in the quality of educational services once the where numbers warrant condition is met.

The second element introduced by the Ontario Court of Appeal concerns the procedure for assuring equality. The Court stipulated that it is up to the legislatures to establish just and equitable laws for the minorities. The latter should not have to demand their rights before the courts. Thus the Court encouraged a proactive rather than a defensive treatment of minorities.

The third element relates to the nature of equality. The Ontario courts in *Reference* and *Marchand* refer specifically to instruction and recognize the equality required in this area. The Alberta Court of Appeal, while accepting equality rights in instruction, refused to grant a system equal to that of the majority. Although he recognized the principle of a complete right to management through a system paralleling that of the majority, Justice Kerans noted that the minority, by the very fact of its minority status, could not reach a number sufficient to claim a parallel system. He stated:

S. 15 mandates that the children who are the beneficiaries of s. 23 should not also be victims. They should get as good an education as do the other children, and at the same time their minority language education must be effective. (p. 54)

It is said that the French minority and the English majority are “similarly situated” and they are not treated similarly. I confess that I find this argument almost impossible to follow. The simple answer is that the “majority” and the “minority”, being thus not similarly situated, can be treated differently. (p. 50)

The judge concluded therefore that equality does not mean the establishment of a complete education system for the minority, and granted equality of instruction but not equality of management.

Prince Edward Island and Saskatchewan judges subsequently adopted a slightly different attitude. When minority and majority numbers are equal, services should be equivalent. This means, in fact, that the minority is no longer a minority. Furthermore, it must be remembered that the majority’s services may vary:

There can be no question that where s. 23 rights become effective the quality of education to be provided to the minority should be equal to that provided to the majority taking into consideration the varying degrees of education received by the majority. (Prince Edward Island, 1988, p. 59)

Consequently, since the majority is subject to various levels of quality of service, so will the minority. Indeed, Justice McQuaid of Prince Edward Island, in an addition to the decision in *Reference*, clearly indicated that the minority's rights are equal but not superior to those of the majority. In Saskatchewan, Justice Wimmer stressed that it is not always possible to offer equal services since costs may be prohibitive.

In short, most of the judges are in favour of the right to equality of educational services but emphasize that the question of where numbers warrant must be considered and that the quality of services may vary from one region to another. However, they are less unanimous in their acceptance of equality of management. Once again, where numbers warrant plays a determining role to the extent that the minority, unlike the majority, has not reached a sufficient number. We will now turn, then, to the question of where numbers warrant.

F. WHERE NUMBERS WARRANT

The where numbers warrant question is the most difficult and controversial issue relating to section 23 because it imposes an explicit limit. Moreover, it appears twice in the text, in paragraphs (3)(a) and (3)(b). The rights to instruction (3)(a) and facilities (3)(b) apply "wherever in the province the number of children of citizens who have such ... right[s] is sufficient to warrant [their] provision ... out of public funds". The court decisions have clarified some aspects of the limitation but other elements remain controversial.

First, it has been clearly established that the territory used as a basis for calculating the required number is not limited by existing school board boundaries. The Ontario Court of Appeal held that rights under section 23 transcend school board geographical boundaries. The judgments of the Alberta (1985) and Saskatchewan Courts of Queen's Bench (1988) as well as those of the Prince Edward Island (1988) and Manitoba (1990) Courts of Appeal, also concluded that calculation of the required number must not be limited to existing school board boundaries because two groups of parents belonging to two adjoining boards could, together, represent a number sufficient to warrant creation of a minority school. The requirement for flexibility is understandable given that school reorganizations affecting the number of school boards have occurred in every province at some time in their history. School board boundaries are therefore not immutable.

A second aspect to be considered is the following: must the number required be calculated on the basis of the number of children of eligible parents (eligible children determined as a function of the beneficiaries), or rather on the basis of the actual number of children whose beneficiary parents wish to avail themselves of the right to instruction in the minority

language? This is a fundamental question which produces two different calculations. The Ontario Court of Appeal clearly declared in favour of the enrolment eligible under section 23. The Court thus included in the notion of “where numbers warrant” the eligible children designated under section 23, that is, those constituting a potential enrolment for educational services¹⁵.

The argument has, however, gradually changed. When Justices Purvis (1985) and Wimmer (1988) speak of the number of eligible children, they are in reality referring to the number of children already enrolled in minority programs. The Prince Edward Island (1988) and Nova Scotia (1988) judgments¹⁶ held that it would be illogical and illusory to offer services before demonstrating that they were warranted by the number of children seeking enrolment. Thus, in this instance, “where numbers warrant” is interpreted as the actual number of children enrolled or indicating their wish to enrol. These approaches are more conservative than taken in the Ontario judgment.

Five judgments have been in favour of a two-fold criterion for determining the required number. The first criterion would be satisfied by a lower number in order for the right to instruction to be granted; the second, relating to the right to school facilities, would be satisfied by a higher number. Thus in *Reference re Education Act* (1984), *Mahé et al.* (1985), *Prince Edward Island Education Rights Reference* (1988), *Commission des écoles fransaskoises et al. v. A.G. Saskatchewan* (1988) and *Laurent Lavoie et al.* (1989), it was held that the number required to establish the right to instruction, in accordance with paragraph 23(1)(a), is smaller than that relative to the right to facilities under paragraph (3)(b). It is therefore reasonable to conclude that one number warrants instruction and another the establishment and management of schools.

The judgments given in *Laurent Lavoie et al.* deal mainly with the question of where numbers warrant. The Nova Scotia Court of Appeal (1989) considered that 49 children registered was sufficient to give the right to instruction but did not warrant the right to a separate facility. According to the Court, the costs involved would have been prohibitive.

Given the very different interpretations of where numbers warrant, judges have also wondered which is the appropriate authority to decide the issue. This is the third aspect of the question. It is now accepted that this prerogative cannot be left to local school authorities. The Ontario Court of Appeal considered that only the legislature is entitled to establish a minimum number. It noted:

Since the numbers test should be applied on a local basis throughout the province, any arbitrary limitation applied across the province without any qualification or exemption may be difficult to justify. The numbers fixed will not always be immutable. They may vary with the geographic regions and the type of instruction provided. (p. 47)

The legislature must not only establish the numbers required according to local circumstances but must also justify such numbers by adequate criteria. The Prince Edward Island Court of Appeal also held that the legislature or the Lieutenant Governor-in-Council (the cabinet) were best placed to establish sufficient numbers. The Manitoba Court of Appeal shared the view that school boards are not in a position to judge where numbers warrant. A majority of judges raised the possibility of creating an independent body to deal with this matter.

Some judgments offer suggestions which might be used by the legislatures to define where numbers warrant. In Ontario the provincial authorities must ensure that the numbers are not fixed or immutable. Justice Purvis of Alberta (1985) held that the following factors may be taken into account in establishing sufficient numbers:

- the distance a student must travel and the travel time;
- the ages of the children involved;
- the possibility of providing residence accommodation for eligible students;
- the impact such arrangements would have on the social development of the children;
- costs. (pp. 41-42)

Since 1985 most courts have considered costs as another variable affecting decisions on where numbers warrant.

The where numbers warrant criterion has turned out to be extremely important in giving effect to official language minority rights. Clearly, the court decisions indicate that it is impossible to establish a number or numbers on a national basis. Each province must decide upon the matter. However, the number appears open to a wide range of possible interpretations by provincial authorities. The courts are hesitant to trespass upon provincial powers and have attempted, for the moment, to give guidelines which would provide for an interpretation of "where numbers warrant" in accordance with the objective of section 23.

For purposes of analysis in Chapter II, we will take as a parameter the children deemed eligible for purposes of calculating where numbers warrant as established by the Ontario Court of Appeal. By comparing statistically the existing recognition of the right to instruction (enrolments) with its potential recognition (children eligible), we hope to contribute to the implementation of section 23 and encourage the emergence of some average denominator between these two numbers as a basis for forecasting offers of service.

III. CONCLUSIONS

Historically, section 23 was designed to respond to an overall objective of ensuring the vitality of the official language minority communities. This was to be done through two complementary paths: (1) correction of an historical situation of assimilation by establishing a uniform body of educational measures for official language minorities across Canada;

and (2) implementation of an effective instructional and management system, albeit one which remained to be defined. What is the situation after eight years of judicial interpretation?

The judgments rendered have all been very respectful of provincial authority over education and cautious in their attempts to indicate the way ahead for minorities and majorities without infringing upon provincial government prerogatives. In this chapter, we have seen how the measures in question may come up against an area of jurisdiction, education, which is a particularly provincial prerogative. While lower and appeal courts have leaned toward protecting provincial authority, they have suggested, sometimes quite strongly, that legislatures take action.

However, the Quebec Anglophone minority won its case before the country's highest court in *Quebec Association of Protestant School Boards v. A.G. Québec* (1984), thereby ensuring recognition, among other things, that the eligibility criteria of the Canadian Charter took precedence over Quebec law. In 1987, the Association Bugnet, on behalf of Alberta Francophones, brought its case before the Supreme Court of Canada in *Mahé et al. v. the Queen*.

Moreover, the courts have recognized the importance of putting into place effective measures to allow official language minorities to flourish. Such measures include consolidation of the minority through eligibility criteria for rights, education in the minority language, the development of separate homogeneous facilities, management by the minority of its educational facilities and, lastly, equality in the quality of services. While these measures flow directly from the letter of section 23, those concerning its application flow from its spirit. By recognizing the legitimacy of these measures and interpreting them as constitutional rights, the courts have given section 23 an orientation designed to protect Canada's official language minorities.

This chapter has explained the key aspects of section 23 and provides the basis for examining, in subsequent sections of this work, the current and potential situation concerning implementation of the rights conferred.

IV. SUMMARY

1. OBJECTIVES OF SECTION 23 OF THE CHARTER

A. Background prior to 1982

The objectives of section 23 can be understood through an historical description of its origins.

Section 93 of the Constitution Act, 1867 confirmed the rights of religious minorities to schools and school management. At the time, these provisions in fact protected the minorities' linguistic character. Five Canadian provinces retain denominational rights:

Quebec, Ontario, Saskatchewan, Alberta and Newfoundland. Section 23 was thus added to a context of religious rights in some provinces.

The origins of section 23 lie in Book II (Education) of the *Report of the Royal Commission on Bilingualism and Biculturalism* (1968). Two objectives were sought at the time:

- effective acquisition of the minority language; and
- provision, through schools, of a socially and culturally stimulating environment that would enable official language minorities to flourish.

In 1982, section 23 had three objectives:

- to encourage the establishment across Canada of a *uniform (similar) body* of measures that would enable the official language minorities not simply to survive but to flourish;
- *to correct historical situations* caused by assimilation;
- *to strengthen national unity* by reducing the growing polarization of the two major linguistic communities (French and English).

Section 23 thus confirmed the fundamental role played by *education* for the vitality of official language minorities.

B. Objectives since the advent of the Charter

The judgments rendered by the courts since 1982 have confirmed the objectives of section 23 by encouraging, in general, the implementation of *measures which enable official language minorities to flourish*.

2. INTERPRETATION OF SECTION 23 BY THE COURTS

Since 1982, decisions have been rendered in ten cases across the country. The 13 proceedings in question are as follows: six before lower courts; six before provincial courts of appeal, including three constitutional references; and one before the Supreme Court of Canada. At first, the courts recommended a *broad and liberal interpretation* of the rights conferred by section 23 but later favoured a *narrow* approach. By 1989 the broad and liberal approach was in favour again.

- In 1984, the judgment of the Supreme Court of Canada (*Quebec Association of Protestant School Boards v. A.G. of Québec*) adopted a broad and generous interpretation in light of the basic objective of section 23: correction of a system which was harmful to the development of official language minorities. Two other Supreme Court judgments on other sections of the Charter reinforced the orientation toward a *broad and generous*

interpretation. The provincial judgments prior to 1986 drew upon this interpretation.

- The judgment of the Supreme Court of Canada in *Société des Acadiens et al. v. Minority Language School Board no. 50 et al.* (1986) was not concerned with section 23 but it did deal specifically with the political compromises arrived at during the elaboration of the Charter's linguistic rights (sections 16-22). It put the accent on provincial authority and encouraged a *narrow* interpretation of rights in subsequent judgments on section 23.
- The decision of the Alberta Court of Appeal in *Mahé et al.* (1987), and that of the Saskatchewan Court of Queen's Bench (1988), interpreted section 23 as a *political compromise* requiring a narrow rather than a broad and generous approach by the courts.
- The Prince Edward Island (1988) judgments attempted to *reconcile* a *generous approach* to rights resulting from a *political compromise* and believed it was necessary to protect provincial jurisdiction over education.
- The judgment of the Nova Scotia Court of Appeal reinstated a *broad and liberal* interpretation of section 23 and distinguished between it and sections 16-22 on linguistic rights. The latter are the fruit of a political compromise, whereas section 23 is not.

A. Eligible Parents

To be eligible for the rights conferred by section 23, an individual must meet the following *mandatory* criteria:

- be a Canadian citizen;
- reside in Canadian province;
- be the parent of a child or children at the elementary or secondary level.

In addition, eligibility is gained through *one* of the following three linguistic criteria:

- the first language learned and still understood by the parent is that of the minority;
- the parent's language of instruction at the elementary level is that of the minority;
- the language of instruction of one child in the family is that of the minority.

The courts have applied the criteria in section 23 as described above. Some clarifications have been made in Quebec, Ontario, and Saskatchewan.

The Supreme Court of Canada (1984) replaced the territory of Quebec (*Quebec clause*) by that of Canada (*Canada clause*). For any Anglophone wishing to live in Quebec, the minority eligible for rights under section 23 was thereby defined as existing in all parts of Canada.

The *Ontario Court of Appeal* (1984) indicated that the Charter did not require children to be *Francophone* to have a right to instruction in French in Ontario.

In the *Prince Edward Island Education Rights Reference* the court confirmed that rights are conferred on *parents* and not on children.

Justice Wimmer of Saskatchewan (1988) added the words “parents or *guardians*” in his judgment in order to clearly indicate that the rights conferred on parents are also conferred on persons acting *in loco parentis*.

B. Right to Instruction

The courts have determined that the right to instruction *does not mean* the right to instruction in *immersion* programs. Such programs serve the majority and not the official minority. They are, moreover, second-language programs rather than language programs serving the minority.

The decision in *Mahé et al. v. the Queen* (1987) specified that the right to instruction included the right to *effective pedagogy* and set out the following aspects:

- instruction in subjects other than language;
- a staff specially selected to teach the minority;
- the language of administration to be that of the minority;
- instruction to be given in an environment isolated from the majority;
- close links between parents and school;
- community participation in school affairs.

In other words, the right to instruction is interpreted as a *right to a complete education*. The Prince Edward Island Court of Appeal added that appropriate equipment was required.

Lastly, minority instruction must be provided out of public funds.

C. Right to Facilities

According to court interpretations, the term “facility” refers, in general, to minority *schools* established when warranted by the number of minority students. When the number is insufficient, classrooms in premises shared with the majority may meet the requirements of section 23.

D. Right to Management

Every judgment except for the *Manitoba Reference* recognizes in section 23 a right to management for official language minorities.

- The main argument used by the courts to justify the right to management is that of the *historical wrong suffered by minorities* deprived of control of

their education. Lacking control over education, they are at the mercy of decisions of a sometimes insensitive majority. Management is important for minorities who wish to attain the objective contemplated: the vitality of the minority community. Minorities lose part of their cultural and linguistic identity when subject to the influence and decisions of the majority.

- Justice Purvis of the Alberta Court of Queen's Bench (1985) recognized the right to a "*degree of exclusive control*" for the minority and specified some of its elements.
- The Alberta Court of Appeal confirmed that, where numbers warrant, the minority has the right to a *complete system of education* paralleling that of the majority.
- The Saskatchewan Court of Queen's Bench (1988) held that the *right to management* is conferred in the case of *autonomous, separate facilities*. No particular right to management is given to the minority when instruction is delivered in shared classes, and it must then content itself with advisory committees.
- The right to management recognized by the Ontario Court of Appeal (1984) is linked to *classes and schools* and refers to all decisions relating to minority education.
- The Prince Edward Island Court of Appeal (1988) concluded that the minority has a right to *participate in the development and provision of programs*.
- All the judges of the Manitoba Court of Appeal (1990) stated that section 23 does not, explicitly or implicitly, give a complete right to school management.

All the judgments emphasize that *implementation* of the right to management remains an area of *provincial jurisdiction*.

E. Equality of Services

In principle, all the judgments on section 23 recognize the right to equality of services for the minority.

The judgments are unanimous with regard to instruction: the *education* of the minority *must be equal in quality to that of the majority*. However, it is up to provincial legislatures to establish the modalities (laws, regulations, education system) that will ensure such quality.

The equality principle is more difficult to specify with regard to school management. In general, the courts recognize the following principle: *where numbers are equal to the majority, management is equal*.

F. Where Numbers Warrant

The words “wherever in the province the number ... is sufficient” impose a limit on the rights under section 23. It has been clearly established that *existing* school boundaries *should not limit* the area to be used as the basis for calculating the required number.

Each *provincial legislature or cabinet* must establish “where numbers warrant”. These decisions cannot be left to local authorities, in particular school boards, because their boundaries are determined in light of the majority population. For the minority population, however, such boundaries are arbitrary, and rights are conferred on the minority “wherever in the province” numbers warrant.

Although the judgment of the Ontario Court of Appeal (1984) determined the required number on the basis of *eligible children* (the potential enrolment), the other courts have favoured using the actual enrolment, that is, those *requesting* services by virtue of the rights conferred.

Two numbers are generally put forward: the first confers the right to instruction and the second the right to minority facilities.

3. CONCLUSIONS

The first objective of section 23, to establish uniform educational measures for official language minorities at the national level, encounters the problem of provincial jurisdiction over education. It is generally recognized that establishing a single system which would meet the needs of official language minorities across the country is impossible. The courts have, however, asked provincial legislatures to take the measures needed to set up the system required in their respective provinces.

The second objective of section 23, to enable the minority community to flourish, has been recognized by every court. Moreover, the courts are unanimous with regard to the implementation of educational measures which will encourage the vitality of official language minorities. To this end, the following elements are considered indispensable: (1) aggregation of the minority by way of eligibility criteria for rights, (2) instruction in the minority language, (3) development of separate autonomous facilities where numbers warrant, (4) management of facilities and classes and (5) services of equal quality.

Notes

- 1 Manitoba is the only province to have eliminated the rights confirmed at the time of entry into Confederation. The province, under the Manitoba Act, had guaranteed religious minority rights. However, in 1890 these guarantees were eliminated by the Public Schools Act.
- 2 Except for the Premier of Québec.
- 3 Proceedings in ten cases, three of which received judgments at two levels, namely: *Québec Association of Protestant School Boards, Mahé et al.* in Alberta and *Lavoie et al.* in Nova Scotia. See Table I-1.
- 4 Each of the five judges of the Manitoba Court of Appeal, Justices Monnin, O'Sullivan, Hall, Philp and Twaddle, gave his own opinion in this case. Justice Philp concurred with Justice Twaddle.
- 5 However, a resident of the Northwest Territories or Yukon could bring the interpretation of the word "province" before the courts and claim rights under section 23. It is presumed, however, that the word "province" would be interpreted liberally and would also include the two territories. Thus the present study includes the territories as well as the provinces.
- 6 For greater clarity, we have adopted the following terminology for this study. The word "beneficiary" refers to parents given rights by section 23. The term "eligible children" refers to the beneficiaries' children. The totality of such children constitutes a "potential enrolment" or an "enrolment eligible" under section 23.
- 7 This section will come into force in Quebec when authorized by the government or the legislative assembly. See the section in Chapter II devoted to Quebec.
- 8 However, the definition of mother tongue was modified by Statistics Canada in 1986 in that its guidelines allowed for respondents to name more than one mother tongue. Thus the census question 6 on mother tongue asked: "What is the *first language you learned* in childhood and that you *still* understand?" Respondents could choose one or several mother tongues. The consequences of this change for the interpretation of section 23 are set out in Chapter II.
- 9 The decision of the Supreme Court is explicit in this respect: "The framers of the Constitution unquestionably intended by s. 23 to establish a general regime for the language of instruction, not a special regime for Quebec; but in view of the period when the Charter was enacted, and especially in light of the wording of s. 23 of the Charter as compared with that of ss. 72 and 73 of Bill 101, it is apparent that the combined effect of the latter two sections seemed to the framers like an archetype of the regimes needing reform, or which at least had to be affected, and the remedy prescribed for all of Canada by s. 23 of the Charter was in large part a response to these sections". (p.17) [10 D.L.R. (4th) p.332]
- 10 See the Overview section, Chapter II, for a detailed description.
- 11 We would advance the following hypothesis: the courts give rights under section 23 to anyone who declares his or her mother tongue to be that of the minority — single mother tongue (French or English in Quebec), double mother tongue ("French and English" or "French or English and another"), triple mother tongue ("French, English and another"). However, in the statistical study in Chapter II, our reference point is the median, that is, it includes single mother tongue (French or English) and double mother tongue (French and English) declarations. In this respect, we also provide data illustrating the minimum (single minority mother tongue declarations) and maximum (all declarations choosing the minority language whether single, double or triple) positions.
- 12 This is why Chapter II is concerned more specifically with grades covering the elementary and secondary levels, usually from grades 1-12. In general, these grades include children from 6-17 years of age.
- 13 In order to standardize terminology, we normally use the term "school board" to refer to a locally or regionally based, elected system of school management. However, other appropriate terms are used in Chapter II when describing the system specific to each province or territory: district; board; division or school commission.

- 14 Given its consistency with the traditional approach to democratic management of public funds, this is the preferred option for our analyses.
- 15 This is the interpretation we juxtapose in Chapter II with the actual number of children enrolled in minority programs and schools.
- 16 Justice Sullivan of the Manitoba Court of Appeal shared this opinion.

CHAPTER II

State of education of the official language minorities in Canada

CHAPTER II

STATE OF EDUCATION OF THE OFFICIAL LANGUAGE MINORITIES IN CANADA

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1. Statistics
2. Description of school system

C. Summary

Each Canadian province and territory has been uniquely fashioned by geography, history and immigration. This chapter presents a picture of the Canadian mosaic from the specific viewpoint of the state of official language minority education. The parameters set out in section 23 of the Canadian Charter of Rights and Freedoms, described in Chapter I, provide the framework for analysing the situation as it relates to programs of instruction, homogeneous schools and the school management system.

A brief reminder of the parameters. Section 23 describes the three categories of parents who have minority education rights; all their children make up the enrolment eligible for education services. The categories are: (1) those whose mother tongue is that of the minority; (2) those who received their primary education in a minority language; or (3) those who have a child who received or is receiving primary or secondary education in the minority language. Education services are subject to two conditions: (1) provision out of public funds and (2) provision of primary and secondary school instruction. The education services are of two types: (1) instruction in programs and courses designed for the minority and, (2) where numbers warrant, instruction in "minority language educational facilities", i.e. homogeneous schools.

The chapter is essentially descriptive. An overview, which provides data essential to an understanding of the chapter as a whole, serves as a general introduction to each of the subsequent sections. These sections describe in greater detail the current status of official language minority instruction and school management in each province and territory. To show the progress of minority education rights, as well as the context of and parameters for recognition of those rights by provincial and territorial governments, each section begins with a summary of minority language instruction and management, including the highlights of relevant provincial acts and regulations. Subsequent analysis provides:

- the demolinguistic context, more specifically the proportion of the total provincial or territorial population represented by the population whose mother tongue is that of the minority;
- the status of instruction-related services, i.e. the acts and regulations which govern access to instruction, number of schools providing instruction to the minority in its own language, number of homogeneous schools and enrolment in these schools compared to the number of persons who have the rights under paragraph 23(1)(a); and
- the school management system in force: management, role of the ministry of education, role of school boards and parents, and the school management system advocated for the official language minority.

Because of the complexity of the problems related to official language minority instruction in the Canadian context, the general nature of a work such as this necessarily imposes limitations. A number of factors directly or indirectly related to the problems involved (e.g. size of demand for minority language education services, accessibility, standards) could not be analysed. Assimilation rates are touched on only briefly. Further studies should be able to shed further light on these matters.

I. OVERVIEW: BACKGROUND, STATISTICAL DATA AND CONTEXT

The overview primarily describes the historical events that have had the greatest impact on the current official language minority education situation¹. Because of the distinctive evolution experienced by French-language minorities in Canada and the English-language minority in Quebec, a separate history of each group is given.

Statistical data are presented so that the main aspects of official language minority education systems may be compared. For each province and territory, the data include: (1) the official language minority population as a proportion of the total population; (2) the number of schools delivering instruction in the minority language; (3) the minority school enrolment receiving that instruction; (4) the number of school-age children (6 to 17 years) whose mother tongue is that of the minority; and, lastly, (5) the number of school-age children (6 to 17 years) under the paragraph 23(1)(a) criterion of the Canadian Charter of Rights and Freedoms². The sections entitled "Context" summarize the minimum number set by each province or territory as the basis for implementation of the paragraph 23(3)(a) right to instruction and the paragraph 23(3)(b) right to management, with a descriptive summary of the school management structures in force for official language minorities.

A. BACKGROUND

1. The Francophone minority

Three major historical events common to all provinces and territories have marked, to varying degrees in different regions, the evolution of instruction in French and school management. Each event entailed a period of restriction followed by a period more favourable to the development of the French-language minority:

1. withdrawal of rights, sometimes including prohibition of French-language instruction, followed by gradual recognition of the education rights of the Francophone minorities;
2. consolidation of school districts, entailing loss of the *de facto* local control which Francophone communities had established, followed by establishment of new management models to accommodate the Francophone minorities; and
3. in the first instance, partial or complete substitution of programs of instruction in the mother tongue designed for the minority by French as a second language immersion programs designed for the majority and, in the second instance, official differentiation between these programs.

This section summarizes the nature of these events³; the background subsection of each subsequent section of the chapter describes the manner in which the events occurred in each province and territory.

The first French-language schools were founded before Confederation, i.e. before the Constitution Act, 1867. The 1867 Canadian federation, which gave provincial governments exclusive jurisdiction over education legislation, was critical to the evolution of French-language education in Canada. Provincial governments, largely through public funding, gradually took over an area of jurisdiction formerly handled by local authorities, which had given the Francophone communities the broadest autonomy. Provincial governments adopted laws and regulations which directly and unilaterally governed, within each province, such matters as language of instruction, certification of teaching staff, subjects taught, textbooks and geographic boundaries of school districts.

Each provincial government, eager to consolidate its power and, more important, satisfy the linguistic majority, henceforth tried to set up a uniform province-wide education system. Generally speaking, the measures adopted were advantageous to the Anglophone majority and detrimental to the Francophone minority. A considerable volume of legislation blatantly restricted, repealed or prohibited in whole or in part provisions which had previously permitted instruction in French, and gradually imposed English as the only authorized language of instruction. Such legislation was passed in Prince Edward Island (1854), New Brunswick (1871), Ontario (1889 and 1913), Manitoba (1890 and 1916), Alberta (1892) and Saskatchewan (1892, 1918 and 1931).

The promulgation of Regulation 17 in Ontario (1913) is a familiar example. The regulation restricted teaching in French to the first two years of primary school and prohibited it in other grades (Dufresne et al., 1988, p. 304). It remained in force until 1927. Because of the resistance and strong protest it aroused, it is a landmark in the struggle for survival of the province's Francophone minority.

Between 1910 and 1920, the evolution of French-language education in Canada took a different direction. The Francophone minorities gradually formed large associations, which increased their leverage with the provincial governments. Most provinces adopted a more open attitude to their Francophone communities and gradually began to modify their legislation to reinstitute instruction in French.

Nonetheless, the more liberal attitude was often limited to specific grades and, in some cases, only covered a portion of the school day. The following provinces adopted laws or regulations permitting instruction in French in some grades or during part of the school day: Manitoba (1896, 1955, 1963, 1967 and 1970), Nova Scotia (1908 and 1981), Saskatchewan (1896 and 1967), Alberta (1925 and 1964), Ontario (1851, 1944, 1966 and 1968), Prince Edward Island (1971 and 1980) and New Brunswick (1977). The above dates

indicate a marked change of attitude after 1960, especially in New Brunswick, Ontario and Manitoba.

It was about this time that the federal government officially recognized the linguistic duality of Canada and undertook to establish national policies that would respect it. Subsequent to publication of Book II (Education) of the *Report of the Royal Commission on Bilingualism and Biculturalism* (1968) and the federal Official Languages Act (1969), the question of official language minority education rights became a focus of intergovernmental negotiation in the 1970s. It was then that Francophone minorities made significant gains in education. Section 23 of the Charter is the national outcome of the process for recognizing rights to instruction in the language of the Francophone minority.

When provincial governments adopted measures restricting instruction in French, a system of parallel private institutions was set up by Francophone religious communities. These schools promoted minority development by giving some of its members access to minority language instruction in homogeneous institutions which were, for all practical purposes, governed by the minority. Since the early 1970s this system has virtually disappeared. In 1990 the only such school remaining is Collège Mathieu in Gravelbourg, Saskatchewan. In Ontario there are four private Francophone schools, all fairly new and all located in Ottawa. Although private institutions have played an important role in the survival of the Francophone minority, this alternate education system is no longer available.

The French-language minorities often lost their autonomy in school management when small school boards were consolidated to form large administrative units. The changes to school boundaries made by provincial governments helped remove some *de facto* local school management from the Francophone minority. With the exception of New Brunswick, where concentrations of the French-language minority population were great enough in 1966 for the large school districts to include significant numbers of Francophones, successive waves of administrative consolidation integrated the Francophone minorities into the majority groups. As the geographic areas governed by the school boards grew, the Francophones elected to the boards were further and further removed from their communities and their interests. School district reorganizations have affected the Francophone minorities in Nova Scotia (1864 and 1982), Manitoba (1890 and 1971), Alberta (1913, 1937 and 1964), Saskatchewan (1944), Ontario (1969) and Prince Edward Island (1971 and 1972).

Since the early 1970s school management has posed new concerns. As we will see in Chapter IV, New Brunswick proposed school boards based on language lines to give the French-language minority total control of school management. Section 23 recognized these concerns and provided for the creation of new management models⁴ right across Canada.

Between 1970 and 1982 the new awareness of Canadian linguistic duality was a great stimulus to the popularity of French immersion programs. Paradoxically the establishment of these programs designed for the Anglophone majority inhibited the development of education in French designed for the Francophone minority. In most provinces and territories,

the two activities were partly or completely amalgamated, from program design to management by the ministry of education.

In 1982 the Alberta Ministry of Education still made no distinction between official language minority and immersion program majority school enrolments⁵. Some English-speaking provinces still operate schools and courses in which Francophones and Anglophones learn French together in an immersion program. However, the jurisprudence on section 23 has made a clear distinction between the two programs⁶.

This is the context in which one must view the current state of legal, political and community action concerning the rights of Francophone minorities in all parts of Canada to instruction and management of education services. The times of restriction, in which three major events influenced the provision of education services to the Francophone minority, are gradually fading away and, generally speaking, important progress is being made right across Canada.

2. The Anglophone minority in Quebec

The history of Quebec Anglophone minority education is to some extent the reverse of the history of the French-language minorities in Canada. In *The Forgotten Quebecers: A History of English-speaking Quebec 1759-1980*, Rudin describes the evolution of teaching in English in Quebec as follows:

English-language Quebec was totally transformed in the post-Confederation period. No longer an overwhelmingly British population with strong roots in various parts of the province, English-speaking Quebec by the late twentieth century had become ethnically diverse and concentrated in Montreal, where a once powerful English-speaking elite had seen its influence greatly reduced (1986, p. 223).

Whereas Francophone minorities rarely possessed any significant political, economic or socio-cultural power, Quebec Anglophones, following a complete reversal of their relationship to the Francophone majority, evolved, as Rudin shows, from a powerful group to a heterogeneous community within a majority community eager to assert its identity. Before the Quiet Revolution and the consolidation of the Quebec government which began in the 1960s, Quebec Anglophones of British extraction were for all practical purposes part of the relatively homogeneous Canadian majority. The Quiet Revolution and its repercussions changed the situation: the new assertiveness of the Quebec government made the distinct nature of Quebec society increasingly apparent and Quebec Anglophones began to feel like a minority.

Three main reasons underlie the erosion of the English-language minority's education system: (1) the gradual loss of the Anglophone group's homogeneity in a system based on denominational duality; (2) the centralization of school services and funding following establishment of the Ministry of Education in 1964; and (3) the introduction of provincial language legislation, some of which specifically governs the language of instruction and specifies that children from outside the province are to attend the majority school system.

In Quebec, the denominational system had an equally strong conditioning influence on English-language and French-language education. Before Confederation, an appointed superintendent unified, in appearance at least, the education systems of the two denominational groups, i.e. the Catholics and the Protestants. With the inclusion of denominational rights in the Constitution Act, 1867, the autonomy of the two denominational groups in education matters was entrenched. In 1875 the Ministry of Public Instruction was abolished. Each denominational committee (Protestant and Catholic) enjoyed full jurisdiction over education. Until 1964 the government played only a limited role in managing the education system.

Although the system's denominational duality initially enabled Anglophone Protestants of British extraction to administer their education, the same duality progressively increased the ethnic and denominational heterogeneity of the Anglophone language group as a whole, and it became increasingly difficult for members of the group to agree on a vision of education.

In Montreal shortly after the turn of the century, the massive influx of immigrants of Jewish origin, whose mother tongue and religion gave them no specified place in the school system, increased enrolment in the Anglophone Protestant sector, for most of the Jewish immigrants initially enrolled their children there (Jones, 1982, p. 103). Rudin (p. 253) tells us that the Protestant schools were a vehicle for integrating Jews into Anglophone Quebec. The ethnic composition of the student population in the Protestant sector was significantly changed: whereas in 1891, 94% of the enrolment was of British origin (with 5% of French origin and 1% neither French nor British in origin), the proportion fell to 78% by 1980 because of a 15% increase in students whose origin was neither French nor British (Rudin, 1986, p. 250). The Protestant school system also became mainly non-denominational in practice.

The Anglophone Catholic sector, which initially taught pupils of Irish extraction (essentially Catholic), experienced a considerable increase in population after the Second World War, when there was a massive influx of Catholic immigrants of Italian origin who spoke neither English nor French and elected to educate their children in the Anglophone sector of the Montreal Catholic School Commission (MCSC). Since 1928 an Anglophone committee within the MCSC had been operating semi-autonomously.

Jones describes the dilemma for the Anglophone minority inherent in the Quebec denominational system:

For English-speaking Protestants, there were two major issues to be dealt with during this period: first, the question of consolidation and second, how to accommodate those who were neither Protestant nor Catholic. For English-speaking Catholics the perennial question was: how to survive in a system in which they were outnumbered twelve-to-one by French-speaking Catholics. (1982, p. 99)

Until the establishment (1964) of the Quebec Ministry of Education, the standard and autonomy of the Protestant school system were guaranteed by the economic power of its members. The residential, business and industrial taxes levied by the Protestant school boards were used entirely to finance the Protestant schools (Rudin, 1986). The sizeable financial resources obtained by the Protestant school system through municipal taxation traditionally gave it, especially in the Montreal area, standards superior to that of the Quebec school system as a whole.

One of the main goals of the centralization of school funding and services, which began immediately following establishment of the Ministry of Education, was to standardize funding of the Catholic and Protestant systems. As a result, the English-language minority lost part of its former independent management of education services and the range and standard of those services were eroded to some extent.

Lastly, the language legislation adopted by the Quebec government since the 1960s (Bills 22, 63 and 101) progressively reduced the traditional attraction of the Anglophone school system for new arrivals. Each of these laws includes provisions directly related to the language of instruction, the specific goal being to reverse the traditional trend and integrate new arrivals into the Francophone majority⁷.

These are the main factors underlying the anxieties that Quebec's Anglophone minority currently feels about its school system.

B. STATISTICAL DATA

1. General demolinguistic data

This section begins with a summary of some demolinguistic data, which are explained later in the chapter (sections II to XII) for the individual provinces and territories. The data reveal the status of official language minority education in light of the rights conferred by section 23 of the Charter.

First of all a word about the methodology used to analyse the data, most of which come from a special Statistics Canada compilation. A change introduced by Statistics Canada for the 1986 Census enabled respondents to report more than one mother tongue. The purpose of the change was to provide more comprehensive information on persons with two or more mother tongues (Statistics Canada, 1988). Instead of being restricted to reporting one mother tongue only, respondents were given the option of choosing more than one: (1) French and English, (2) French and a non-official language, (3) English and a non-official language, and (4) French, English and a non-official language.

The option of indicating two or more mother tongues tends to swell the figures on the total number of minority mother tongue respondents: when census results are compiled, results for one mother tongue and two or more mother tongue respondents may be consolidated.

Generally speaking, the data used here are based on respondents who reported one mother tongue and those who reported two (French and English). Some additional information was obtained from the results on respondents who reported two mother tongues (French or English and other) or more than two mother tongues (French and English and other).

For purposes of comparison with preceding years, Statistics Canada, as described in a report entitled "1986 Census of Canada: Adjusted Language Data" (1988), proceeds as follows: the total number of respondents who reported a single mother tongue is added to *one half* the results for respondents who reported two mother tongues (French and English) and *one third* the results for respondents who reported three. We have followed the same procedure for purposes of statistical comparison.

However, we agree with Paillé (1988) that this is not the procedure to use when analysing the mother tongue criterion specified in paragraph 23(1)(a) of the Charter. The criterion does not specify that an eligible parent must have one of the two official languages as the *only* mother tongue⁸. If both the spirit and the letter of the law are to be respected, all eligible parents must be considered, i.e. all parents who reported a minority mother tongue, including parents who reported the other official language or another language as an additional mother tongue.

With regard to the persons eligible under paragraph 23(1)(a), we have opted to add *all* reports of two mother tongues (French and English) and reports of the minority language as sole mother tongue. This middle-of-the-road position has the advantage of including most reports of a minority language mother tongue. A table is also included which gives the results obtained by compiling data on respondents who reported a minority language as the sole mother tongue (a position we find restrictive) and the results for respondents who reported a minority mother tongue, even as one of two or three (the other extreme).

Table II-1 shows the demolinguistic evolution of Francophone and Anglophone minorities according to the 1971, 1981 and 1986 Statistics Canada censuses, based on mother tongue as a criterion. The 1986 census data adjusted for purposes of comparison with preceding years are given separately and identified by an asterisk (*). Also included for purposes of analysis in relation to section 23 of the Charter are data based on all reports of two mother tongues (French and English) (**) and data based on all reports of a minority mother tongue (as one of one, two or more) (***).

Three findings emerge from the data. Firstly, the adjusted data indicate that, between 1971 and 1986, the relative size of each official language minority dropped with respect to its majority population. The French-language minority fell from 6.0% to 5.0% and the English-language minority from 13.1% to 10.4%. In absolute numbers, the 2.7% decrease for the Quebec Anglophone minority represents 110,400 persons in 15 years, a considerable drop. Both official language minorities have tended to shrink compared to the total population of Canada (from 8.0% in 1971 to 6.4% in 1986).

The second finding, established from the data based on reports of two mother tongues (French and English) and of one mother tongue, gives a clearer picture of the overall population contemplated by paragraph 23(1)(a) as examined in this chapter. In 1986, 1,024,695 Canadians outside Quebec reported French as a mother tongue (French only or French and English); the group comprises 5.5% of the total population of Canada's Anglophone provinces. A total of 181,880 persons reported both French and English as mother tongues (18% of those who reported one mother tongue or both (French and English)).

In Quebec in the same year, 730,760 respondents, or 11.2% of the Quebec population, reported English as a mother tongue (English only or French and English). A total of 150,730 respondents reported both French and English as mother tongues (20.6% of reports in this category). The overall population potentially⁹ contemplated by the one mother tongue or two mother tongues (French and English) criterion specified in paragraph 23(1)(a) represents a sizeable proportion of the Canadian population, i.e. 6.9%, or a total of 1,755,455 persons who in 1986 reported French or English as a minority mother tongue (French or English, French and English); approximately 20% of these persons reported a minority language as one of two mother tongues (French and English).

The third finding concerns the totality of minority mother tongue reports, including reports of one, two, or more than two mother tongues indicated by (***) in Table II-1. Here, 1,047,609 persons, or 5.6% of the population of the Anglophone provinces, belong to the group reporting French as a minority mother tongue. Only 22,914 persons fall into the "French and other" and "French, English and other" mother tongue categories (2.2% of the entire population reporting French as the sole mother tongue, or one of two or three mother tongues).

In Quebec, however, the number of respondents reporting "English and other" and "French, English and other" are more numerous. Here, 59,230 persons (7.5% of the English mother tongue population reporting English as the sole mother tongue or one of two or three) belong to this category, bringing to 789,990 (12.1% of the Quebec population) the number of persons reporting English as the sole mother tongue or one of two or three.

Table II-1

Demographic evolution of Francophone and Anglophone minorities, by reported mother tongue, 1971, 1981, 1986

	1971	Total: Minorities	1981	(%)	1986	(%)
Canadian population	21 568 310		24 343 180		25 309 330	
Total: Anglophone provinces	15 540 545		17 904 780		18 776 865	
Francophone minority	926 400	6.0	942 085	5.3	945 860 * 1 024 695 ** 1 047 609 ***	5.0 5.5 5.6
Total: Quebec	6 027 765		6 438 400		6 532 465	
Anglophone minority	789 185	13.1	706 115	11.0	678 785 * 730 760 ** 789 990 ***	10.4 11.2 12.1
Total: Minorities	1 715 585	8.0*	1 648 200	6.8*	1 624 645	6.4*

Source: Statistics Canada

* Data broken down by Statistics Canada for purposes of comparison.

** Includes all those who report French (Anglophone provinces and territories) or English (Quebec) as sole mother tongue or one of two (French and English).

*** Includes all those who report French (Anglophone provinces and territories) and English (Quebec) as sole mother tongue or one of two or three.

a Ratio of official language minorities to overall Canadian population.

Until the 1960s the Francophone minority, a larger group in Canada as a whole than the Anglophone minority, had to contend with situations that hindered its development. The fact that it was scattered over an enormous area played a determining role in its historical development. Fragmentation placed it under the jurisdiction of nine provincial and two territorial governments, and demographic concentration varied widely. In order to show these factors, Table II-2 divides official language minority populations into categories on the basis of ratio to total population of the province or territory.

Table II-2

Minority official language populations as ratio of total provincial and territorial populations, 1986

Populations	Province/ territory	Minority population*	Total: Minorities (in %)
Large (more than one-third)	New Brunswick	248 630	35.0
Substantial (10% to 33%)	Quebec	730 760	11.2
Significant (4% to 10%)	Ontario	529 270	5.8
	Manitoba	56 585	5.3
	Prince Edward Island	6 500	5.1
	Nova Scotia	39 350	4.5
Intermediate (1 to 3%)	Northwest Territories and Yukon	3 115	3.0
	Alberta	62 215	2.6
	Saskatchewan	25 910	2.6
	British Columbia	50 925	1.8
Small (0 to 1%)	Newfoundland	3 115	0.5

Source: Statistics Canada

* Reports of one and two mother tongues (French and English).

The relative size of minority populations by province and territory leads to the following observations. The relative size ranges from 0.5% to 35.0% of the total provincial or territorial populations. According to the scale established¹⁰, the Francophone minority population of New Brunswick was proportionately the largest in 1986 (35%). The province has been officially bilingual since the promulgation in 1969 of its Official Languages Act, the provisions of which came into force over the eight subsequent years. Language legislation was broadened in 1981 by Bill 88, which recognized the equality of the two language communities, and later by the province's 1982 ratification of the Charter¹¹.

The second category is made up of the Anglophone minority in Quebec which, at 11.2% of the total population of the province, is substantial in size. Historically this minority has had access to its own system of schools which, in most cases, it also managed. As we saw in the preceding section, the situation of Quebec Anglophones with regard to education services, especially the relative independence of the Protestant school system, does not depend on demographic factors alone. Nonetheless, demographic decline is currently a matter of concern to this minority.

The Francophone population of Ontario is over half a million but represents only 5.8% of the total population of the province. When the group's situation is compared to that of

other Francophone minorities which represent equally large ratios of the population, the importance of the rights and benefits acquired by Ontario Francophones becomes evident. The right to instruction in French of every child eligible under section 23 was recognized following the decision of the Court of Appeal in the 1984 *Reference*. Two French-language homogeneous school boards have also been established. Furthermore Bill 75 introduced a school management model with guaranteed proportional representation. The object of the French Language Services Act (Bill 8), which was sanctioned in 1986 and came into force in November 1989, is to provide access to government services in French in twenty-two regions designated on the basis of the numerical size of their Francophone population.

Three other provinces have Francophone populations proportionately as large as that of Ontario: Manitoba (5.3%), Prince Edward Island (5.1%) and Nova Scotia (4.5%). In these provinces, Francophones must fight for their education rights; many of them have taken court action in an effort to obtain the rights conferred by section 23 of the Charter.

In the provinces or territories where the size of the minority population is intermediate, (1% to 3%) and small (0% to 1%), governments have done little to recognize the status of French as an official language and establish the constitutional rights of the Francophone minority. The reason most often given is that the Francophone population is too small.

2. Statistics on instruction from 1971 to 1988

In order to establish the underlying trends in education services for official language minorities, Table II-3 traces the evolution of Francophone and Anglophone minority school enrolments for Canada as a whole between 1971 and 1989. The data on school enrolments for the total population of Canada are complete, whereas the data on French official language minority enrolments give a less accurate picture of the situation. To repeat, prior to 1981 some provinces and territories offered no program of instruction specifically designed for the French-language minority. Programs were either amalgamated into immersion programs or simply did not exist. The provinces and territories in question are identified in the legend to Table II-3.

Table II-3

Public school enrolment in Canada, 1971, 1981, 1986, 1988

	1970-71	Total: Minorities (in %)	1981-82	Total: Minorities (in %)	1986-87	Total: Minorities (in %)	1988-89	Total: Minorities (in %)
Total: Canada	5 655 431		4 770 295		4 661 332		4 743 356	
Total: Anglophone provinces	4 066 643		3 670 993		3 624 158		3 711 056	
Francophone minority	196 087 **	4.8	157 734 ***	4.3	151 063	4.2	153 437	4.1
Total: Quebec	1 588 788		1 099 302		1 037 174		1 032 904	
Anglophone minority	248 855	15.7	148 114	13.5	111 862	10.8	105 141	10.2
Total: Minority	444 942	7.9 ^a	305 848	6.4 ^a	262 925	5.6 ^a	258 578	5.5 ^a

Source: Statistics Canada, *Minority and second language education, elementary and secondary levels, 1987-1988*, pp. 28-29.

* The public schools are part of the school board systems. Enrolments are for the elementary and secondary levels, including kindergarten and grade 13 in the provinces and territories in which they exist. Department of National Defence schools are also included.

** Excludes the provinces which, in 1971, kept no separate statistics on instruction in the language of the minority (British Columbia and Alberta). No program was available in the Northwest Territories and the Yukon.

*** Excludes Alberta which, in 1981, made no distinction between immersion programs and instruction in the language of the minority. No program was available in the Northwest Territories and the Yukon.

a Ratio of minority enrolment to total public school enrolment in Canada.

Comparison of Tables II-1 and II-3 shows that the ratios of Francophone minority school enrolment to total enrolment in the Anglophone provinces and territories (Table II-3) are smaller than those of the Francophone minority population to the total population of these provinces and territories (Table II-1). In 1986, the school enrolment of the Francophone minority represented 4.2% of the school enrolment in the Anglophone provinces and territories; however, the French mother tongue minority population accounted for 5.0% of the population of these same provinces and territories, a difference of 0.8%¹². Previously, the gap between the French-language minority population and French-language school enrolment was even greater (1.0% in 1981 and 1.2% in 1971). The data demonstrate relative progress; the proportion of minority enrolment is gradually approaching the proportion of the French mother tongue population. However, progress has been very limited as, between 1971 and 1986, enrolment fell 23% (45,024 pupils).

The same observation applies (although conversely) to the English-language minority population in Quebec in 1986. Minority enrolment represented 10.8% of Quebec school enrolment, whereas the Quebec Anglophone minority population accounted for 10.4% of the province's total population. Before that time, Anglophone minority school enrolment exceeded to an even greater degree the ratio of the English mother tongue minority population to the total provincial population (2.5% in 1981 and 2.6% in 1971). This means that the education services of the Anglophone minority attracted groups other than members of the English official language minority.

Examination of Table II-3 shows in essence that, although in general school enrolment fell 17.6% (a drop of 994,099 pupils out of a total of 5,655,431) in Canada between 1970-71 and 1986-87, enrolment of both the Francophone and Anglophone minorities fell to a proportionally greater extent. If we compare the decline in Francophone school enrolment to the total decline in their respective provinces and territories, we see that school enrolment in the Anglophone provinces and territories fell 10.9% (a decline of 442,485 pupils out of a total of 4,066,643) between 1970-71 and 1986-87, whereas enrolment of the Francophone minority plunged 23.0% (45,024 pupils).

For the period in question (1970-86), Quebec school enrolment dropped 34.7%, from 1,588,788 pupils in the public sector in 1971 to 1,037,174 in 1986. Anglophone minority school enrolment fell 55.1% (a drop of 136,993 pupils out of 248,855). There are a number of reasons for the sharp decline in Anglophone minority school enrolment. It is first of all part of the general trend in Quebec for total school enrolment to fall far more sharply than in the country as a whole. Lower Anglophone minority school enrolment is also the result of the factors discussed above, specifically the repercussions of the language provisions that restrict access to the Anglophone school system by new arrivals. The figures are also the results of a sizeable migration, brought about in part by the economic prospects and feelings of insecurity perceived by the Anglophone population following the Quebec government's increasing assertiveness; many of the more mobile Anglophones simply moved to other provinces in Canada. The low birth rate among Anglophones and increased enrolment of Anglophone pupils in French-language schools are further factors.

The following changes occurred between 1986 and 1988. Table II-3 shows that in Canada as a whole school enrolment rose 1.8% (82,204 pupils). Enrolment in the Anglophone provinces increased 2.4% (86,898 pupils) and enrolment of the Francophone minority rose 1.6% (2,374 pupils), although their proportion of total enrolment in the Anglophone provinces and territories edged down 0.1%. Although there has been progress in Francophone minority enrolment, it is still relative in that Francophone enrolment is at the bottom of the scale of enrolment growth in the Anglophone provinces and territories for the same period.

Enrolment of the Anglophone minority in Quebec continued to fall between 1986-87 and 1988-89 (6,721 pupils, or 6.0%). During the same period, total provincial enrolment stabilized, edging down only 0.5% (4,874 pupils). The erosion of Anglophone minority enrolment continues.

In light of the above enrolment trends, we now turn to what the annual reports of the Commissioner of Official Languages have to say about the changes in the number of schools

providing instruction to official language minorities in Canada as a whole over the same period (1971-89). Between 1971 and 1986 the number of schools offering instruction in French to the Francophone minority fell by 43 (from 678 to 635) (Table II-4). For the Anglophone minority, the comparable figure for the same period is 138 schools (from 519 to 381). Between 1986-87 and 1988-89 the weakening trend continued for the Anglophone minority, which lost a further 11 schools. The situation turned around for the Francophone minority, which registered a net gain of three schools for the same period.

Table II-4

Public schools providing minority language instruction, 1971, 1981, 1986, 1988

	1970-71	1981-82	1986-87	1988-89
Francophone minority	678	655	635	638
Anglophone minority	519	416	381	370

Source: Commissioner of Official Languages. *Annual Report 1983*, p. 176; 1987, pp. 220-221.

It is evident that the 11 years between 1970 and 1981 saw no improvement in the education demographics of official language minorities, both Anglophone and Francophone. The same is true for the first five years following adoption of section 23 of the Charter. Over the 16-year period, the situation deteriorated in Canada as a whole: the drop in minority school enrolment was larger than the national average, and the number of schools declined. Since 1986 the Francophone minority has made progress in both school enrolment and number of schools. Further details on the nature of this progress are given in the sections on individual provinces and territories.

3. Consolidation of education statistics by province and territory (1986)

The following data enable us to compare the provinces and territories in terms of the 1986 situation relating to official language minority instruction under paragraph 23(1)(a) of the Canadian Charter of Rights and Freedoms. Table II-5 presents a general picture of the situation and is followed by an analysis and description of the methodology used to interpret it.

The table compares the three following variables for each province or territory in 1986¹³:

- number of schools in the public sector delivering instruction to official language minorities (column *a* of table);
- student enrolment in public schools (column *b*); and
- provincial school-age population (6 to 17 years) whose mother tongue is that of the minority (column *c*).

The variables shed light on the state of instruction to the minority based on the parameters established by section 23 of the Charter. The essential aspects include the schools, school enrolment and number of minority mother tongue school-age children. The methodology used for each variable follows.

Table II-5

Public schools providing primary and secondary instruction to the minority, by province and territory, 1986

Public schools		Enrolment (grades 1-12)	Minority population 6-17 years	Enrolment MMT* (in %) (b/c)	Eligible enrolment	Enrolment EC** (in %) (b/e)
a		b	c	d	e	f
British Columbia	36	1 525	2 602	58.6	14 815	10.3
Alberta	17	1 575	5 318	29.6	21 093	7.5
Saskatchewan	12	838	1 762	47.6	10 722	7.8
Manitoba	34	5 211	6 681	78.0	17 754	29.4
Ontario	351	77 412	70 462	109.9	135 612	57.1
Quebec	374	111 178 ***	86 946	127.9	121 513	91.5
New Brunswick	154	46 086	46 350	99.4	57 331	80.4
Prince Edward Island	2	497	706	70.4	2 280	21.8
Nova Scotia	20	3 655	3 791	96.4	10 516	34.8
Newfoundland	2	68	267	25.5	1 117	6.1
Northwest Territories and Yukon	2	36	168	21.4	674	5.3
Total: Minorities						
– Francophone	630	136 903	138 107	99.1	271 914	50.3
– Anglophone	374	111 178	86 946	127.8	121 513	91.5

* MMT: minority mother tongue

** EC: eligible under paragraph 23(1)(a) of Charter

*** Kindergarten to Secondary V inclusive. Paragraph 23(1)(a) is not currently applied in Quebec; the school enrolment eligible under section 23 of the Charter rests on paragraph 23(1)(b) (children whose parent(s) received primary school instruction in Canada in a minority language) and subsection 23(2) (children who have a brother or sister who is receiving or has received primary or secondary instruction in a minority language in Canada).

Sources:

- Provincial and territorial ministries of Education. Includes public schools providing instruction to the minority: programs in majority, mixed, bilingual and homogeneous schools.
- Provincial ministries of education and Council of Ministers of Education. *Annual Report 1989, Grade 1 to Grade 12* inclusive or equivalent.
- Statistics Canada. 1986, special compilation, Table No. PO 3272, 17 November 1988. Minority mother tongue population, 6-17 years; includes *single responses* (mother tongue French/English in Quebec) and *double responses* (English and French).
- Ratio of *enrolment* in schools delivering instruction to the minority to mother tongue population 6-17 years of age.
- School-age (6-17 years) *enrolment eligible* under paragraph 23(1)(a) of the Canadian Charter of Rights and Freedoms according to a special Statistics Canada compilation, 1986, analysed by M. Paillé.
- Ratio of 1986 enrolment as a percentage of the enrolment eligible under paragraph 23(1)(a). In practice the figure may be low for the French-language minority because not all enrolment is made up exclusively of pupils eligible under paragraph 23(1)(a).

Number of schools offering instruction to official language minorities

The data on the number of schools offering instruction to official language minorities were provided by ministries of education of the provinces and territories mentioned. Of the schools counted by the ministries, we have considered only those in the public sector and run by school boards¹⁴. They may be of four types:

- majority language schools in which *special programs* have been implemented, mainly at the secondary level or in remote areas, to enrich or adapt a part of the instruction given to the majority to the needs of the minority;
- *bilingual schools* in which instruction to the minority is defined in terms of teaching time spent in the language of the minority; bilingual schools tend to divide time more or less equally between teaching in French and teaching in English;
- “*mixed*” schools: schools in which enrolment is not made up exclusively of official language minority pupils; majority language and minority language pupils study under the same roof, often under the same administration, but in separate classrooms; the terminology used to describe them is not standardized: depending on the province, they may be “two-stream”, “three-stream” or “shared”; in these schools minority classes are in the same building as immersion classes or in English or French schools (in Quebec);
- *homogeneous schools* cater only to minority enrolments; the language of instruction and administration is the minority language, and most of the pupils belong to the minority group; the majority language is the second language.

The variable “school” in Table II-5 (column a) makes no distinction among the four types of schools.

Student enrolment in these schools

Statistics on school enrolment in schools offering instruction to the minority in public institutions are taken mainly from annual reports or other documents published by the provincial and territorial ministries of education. The data were cross-checked against data from Statistics Canada, the Council of Ministers of Education (1989) and organizations representing official language minorities¹⁵.

Special attention was paid to standardizing data on school enrolment to allow for pan-Canadian comparison. Our intention was to compare the situations in the provinces and territories for a 12-year instruction period (6-17 years of age), a period usually equivalent to the primary and secondary levels formally covered by section 23 of the Charter. Because the primary and secondary levels in Quebec cover a total of 11 school years as opposed to

12 in the other provinces (more in Ontario), kindergarten enrolment was included in the Anglophone school enrolment to produce a total of 12 school years¹⁶.

The pupils who make up the French official language minority enrolment in each province and territory are not necessarily eligible under section 23 of the Charter. Pupils belonging to the majority who are not eligible under section 23 are often admitted to minority programs. Our data gave no indication of the exact proportions: the number of non-eligible children enrolled varies from province to province, region to region and school to school, according to whether the competent authorities decide in favour or against applying section 23 criteria for admission to such programs. As a result, enrolment is artificially high: in fact the number of pupils both enrolled *and* eligible under section 23 is smaller than the number reported for French-language minority enrolment.

Data on the Anglophone minority in Quebec are generated on the basis of the eligibility criteria related to language of instruction of a parent, brother or sister.

Provincial school-age population (6-17 years) whose mother tongue is that of the minority

A compilation by Statistics Canada produced specifically for the purposes of our research and analysed by a demographer (Paillé, 1990) establishes, for each province and territory, the population 6 to 17 years of age whose mother tongue is the language of the minority; the age group corresponds to the 12 years of schooling which usually cover the primary and secondary levels. The data include respondents who, in answering the census question on mother tongue, reported French and/or English.

Ratio of minority enrolment to provincial school-age population (6-17 years) whose mother tongue is the minority language

Column *d* of the table gives the result obtained by dividing the second variable by the third, i.e. minority enrolment as a percentage of the province's total school-age (6-17 years) population whose mother tongue is that of the minority. The computation measures the disparity between the number of minority pupils who, in 1986, were educated in a mother tongue and the total school-age minority population which should have been so educated since, in addition to being eligible, it belonged to the minority mother tongue group.

These figures must be taken as maximum indicators inasmuch as the number of children enrolled sometimes slightly exceeds the (6-17) age group. Primary enrolment sometimes includes 4- or 5-year olds, and secondary enrolment 18-year olds, depending on provincial programs or the individual pupil. These pupils are included in enrolment figures, but excluded because of the age group specified in our methodology. The percentage enrolment for the number of children whose mother tongue is that of the minority would be somewhat lower if 4- and 5-year olds and 18-year olds were excluded.

Conversely the percentage enrolment of the minority mother tongue population is a minimum indicator inasmuch as some pupils leave school as soon as they reach the age at which they are permitted to do so¹⁷. School enrolment of 16- and 17-year olds is lower than the number of adolescents in that age group calculated using our criteria.

The two factors (dropping out when provincial regulations allow it and enrolment before the age of 6 or after the age of 17) cancel each other out¹⁸.

Enrolment eligible under paragraph 23(1)(a)

A fourth variable is considered in column *e* of the table (enrolment eligible under paragraph 23(1)(a)). This potential enrolment includes all 6-17-year old children with at least one parent whose mother tongue is the language of the minority. The variable is used to establish, with regard to the requirements of the Charter, an estimate of the potential demand under paragraph 23(1)(a) for minority language education services in each province and territory.

The criteria selected for the statistical data used in column *e* of Table II-5 to determine the children eligible under paragraph 23(1)(a) are as follows:

- children 6 to 17 years of age (inclusive) in a family unit in which
- at least one parent is a Canadian citizen, and
- the mother tongue of at least one parent is the language of the minority (French or English, French and English).

Because the special Statistics Canada compilation covered only family units, the data were adjusted to account for single parent families. It was assumed that the ratio of single parent minority families to total minority families in the province or territory is the same as the ratio of the single parent majority families to total majority families (average of 15%) (Paillé, 1990).

For the mother tongue criterion, we opted to cover mainly the number of eligible children who make up the enrolment eligible on the basis of one mother tongue (French or English) and two mother tongues (French and English). The figures used are somewhat larger than they would be if we had opted to restrict our sample to children whose only mother tongue was that of the minority. However, it would have been larger if we had used all reports of a minority mother tongue as the sole mother tongue or one of two or three. Following the analysis, Table II-8 presents data on the other two choices of mother tongue.

It must be emphasized that the data on eligible children do not take into account all the children eligible under section 23 of the Canadian Charter of Rights and Freedoms for official language minority education. No data are available that could be used to establish with any accuracy the number of children eligible under paragraph 23(1)(b), i.e. children

whose parent(s) received primary instruction in the language of the minority in Canada. Also unavailable are data that could be used to establish children eligible under subsection 23(2), i.e. children whose brother(s) or sister(s) received or is (are) receiving primary or secondary instruction in the language of the minority. Our data provide a conservative estimate of the need which theoretically remains to be filled all across the country in terms of official language minority accessibility to instruction. Because the enrolment contemplated in paragraph 23(1)(a) represents the great majority of the population contemplated by the Charter with regard to education rights for official language minorities, our data provide a fairly realistic picture of the situation.

Our data also cover the number of children in Quebec contemplated by paragraph 23(1)(a), even though the province is not subject to the paragraph because of the right to defer promulgation conferred by subsection 59(2) of the Canadian Charter of Rights and Freedoms¹⁹. The Quebec government believes that the Charter would compromise the education provisions of its language legislation. In Quebec, accessibility to education in English is determined by the provisions of the Charter of the French Language. Paragraph 23(1)(b) and subsection 23(2) of the Canadian Charter of Rights and Freedoms are in force. As a result, eligibility criteria depend on the language of instruction of the child's parents, brothers or sisters, not the mother tongue of the parent(s).

The purpose of this exercise is to evaluate, without considering provincial variations, the potential demand for education services to minorities under the integral application of paragraph 23(1)(a). We also include the data on Quebec, which enable a comparison to be made of actual enrolment under the two criteria currently in force and enrolment eligible under paragraph 23(1)(a).

Percentage of school enrolment in minority programs as a ratio of enrolment eligible under paragraph 23(1)(a)

The second variable (column *b*) is divided by the fourth variable (column *e*) to obtain column *f* of the table, the percentage of school enrolment in programs of instruction designed for the minority (1986) compared to total school enrolment eligible under paragraph 23(1)(a). The results illustrate the disparity between the number of pupils who were receiving instruction in the minority language in 1986 and the number of eligible children defined in paragraph 23(1)(a). It must be remembered that the figure is a maximum indicator inasmuch as school enrolment figures are greater than the number of eligible children included in the enrolment²⁰.

This evaluation will also prove useful for individual provinces and territories, regardless of the interpretation of the "where numbers warrant" clause given by the courts. As we saw in the Chapter I, some courts believe that the number must be determined on the basis of real demand for education services. Others maintain that the number must first take into account the potential demand based on integral application of those sections of the Charter relating

to official minority language instruction. Whatever the interpretation²¹, it is important to understand the potential education needs of official language minorities and, where appropriate, attempt to meet them. Knowing the eligible school enrolment will give the various groups involved (minority populations, public at large, provincial and territorial governments) a more accurate idea of the scope of the needs to be met and help them select the best way to do so. Further studies should be done to evaluate, for each province and territory, just how realistic it is to believe that the school enrolment taught in the language of the minority can in fact approach the school enrolment eligible under paragraph 23(1)(a).

It must also be borne in mind that, for many provinces and territories, school enrolment data (column *b* in the table) show that actual enrolment falls short of the actual demand for education services. The demand, which is real, is expressed mainly through minority parent associations and the courts. We do not claim that the provincial and territorial governments purposely hinder minority enrolment for such services. On the contrary, the situation is progressing as a result of the new constitutional provisions; it will further improve when, because quality education services are available, the official language minorities can freely opt to enrol their children in programs specifically designed for them. The standard of these services must be equivalent to those provided to the majority, or many minority parents will prefer to enrol their children in schools which deliver instruction in the language of the majority.

It goes without saying that, in practice, a certain proportion of parents who have the rights conferred by section 23 will prefer to enrol their children in schools designed for majority language children. These parents, even if they are given reasonable access to services designed for the minority language group, will decide to forego the option; this is an individual or family choice.

These, then, are the observations to be drawn from Table II-5, taking into account the three qualifications described above. Firstly, our data are methodologically cautious and conservative: (1) the enrolment included is not made up exclusively of eligible children²² and (2) the mother tongue criterion is based only on respondents reporting French or English, and French and English²³. Secondly, as section 23 of the Charter created a new situation which is still evolving, the real demand for education services for official language minorities may exceed actual provision of these services. Thirdly, the parents eligible for rights under the provisions of section 23 of the Charter may, because they have freedom of choice, opt to have their children educated in programs designed for majority language children.

The percentage enrolment in school board programs of instruction for the minority (variable *b*) as a ratio of the school-age population (6-17 years) whose mother tongue is the language of the minority (variable *c*), indicates (column *d*) that:

- in 1986 the equivalent of 127.9% of English mother tongue 6- to 17-year old children were being educated in minority programs of instruction provided by Quebec school boards;

- in Ontario the equivalent of 109.9% of French mother tongue 6- to 17-year old children were being educated in minority programs of instruction provided by the school boards;
- in New Brunswick²⁴ and Nova Scotia, the equivalent of virtually all school-age French mother tongue minority children were enrolled in minority programs provided by the school boards (99.4% and 96.4% respectively); and
- in Alberta, Newfoundland and the Northwest Territories/Yukon, the equivalent of one child in four whose mother tongue was French received instruction in his/her mother tongue in programs of instruction provided by the school boards.

For the Francophone minorities as a whole, the equivalent of 99.1% of minority mother tongue children were educated in minority programs of instruction provided by school boards. Whereas Statistics Canada enumerated 138,107 French mother tongue children outside Quebec (French only, French and English), 1986 enrolment in minority programs of instruction totalled 136,903 pupils. These findings must be qualified: in the provinces where the French minority population is of intermediate size²⁵ or small, the equivalent of half or less than half of French mother tongue children are educated in French. This is the case in British Columbia, Alberta, Saskatchewan, Newfoundland and the Northwest Territories/Yukon.

In 1986 in Quebec, the equivalent of 127.9% of English mother tongue children were being educated in English. Whereas the number of English mother tongue (English, French and English) children totalled 86,946, total enrolment in minority programs provided by the school boards was 111,178 pupils²⁶.

As a general rule, when the enrolment variable (column *b*) is divided by the enrolment eligible under paragraph 23(1)(a) (column *e*) to obtain column *f*, there is always a disparity (of varying size) between actual school enrolment in minority programs of instruction provided by the school boards and number of eligible children according to 23(1)(a) criteria:

- in Quebec, the equivalent of 91.5% of the school-age enrolment eligible under paragraph 23(1)(a) would, if the provision were applied in the province, be educated in the official minority language in programs provided by school boards;
- in New Brunswick, enrolment in minority instruction provided by school boards was the equivalent of 80.4% of the enrolment eligible under paragraph 23(1)(a);
- in Ontario, the equivalent of 57.1% of school-age children eligible under paragraph 23(1)(a) were educated in programs designed for the French-language minority and provided in the public sector;

- in Nova Scotia, Manitoba and Prince Edward Island, the equivalent of one-third of the children eligible under paragraph 23(1)(a) were educated in programs designed for the French-language minority and provided by school boards;
- in British Columbia, Alberta, Saskatchewan, Newfoundland and the Northwest Territories/Yukon, the equivalent of 10% or less of the children eligible under paragraph 23(1)(a) were educated in French; and
- overall, in eight provinces and territories, the equivalent of less than one-half the children eligible under paragraph 23(1)(a) were educated in minority language programs in the public sector.

In Canada as a whole the French-language minority school-age enrolment eligible under paragraph 23(1)(a) totalled 271,914 children. A total of 136,903 pupils were enrolled in minority programs of instruction provided by school boards, i.e. the equivalent of 50.3% of the eligible enrolment. Furthermore, 138,107 of these eligible children had French as a mother tongue. The number of children enrolled in programs designed for the French minority was equivalent to 99.1% of 6- to 17-year old children whose mother tongue was that of the minority, but equivalent to one-half of our calculation of the children eligible under paragraph 23(1)(a).

The paragraph 23(1)(b) and subsection 23(2) eligibility criteria applied to the Anglophone minority in Quebec generated an enrolment in school board programs somewhat lower than that established on the basis of the criterion set out in paragraph 23(1)(a) of the Charter. The equivalent of 91.5% of school-age children who would be eligible under paragraph 23(1)(a), if in fact the paragraph were applied, were enrolled in minority programs provided by school boards. In the description of Quebec which follows, we discuss the impact of the province's English-language, publicly funded private school system on these data.

The disparity between enrolment in schools offering instruction to the official language minority and enrolment eligible under paragraph 23(1)(a) depends on a number of factors, most of them historical (see first section of Overview). Relevant demographic factors include the minority population, exogamy rates, and exercise of freedom of choice with regard to language of instruction. However, in the provinces and territories where the size of the French-language minority is defined as "intermediate" or "small" (Northwest Territories/Yukon, Alberta, Saskatchewan, British Columbia and Newfoundland), the disparity may also be the result of other factors (e.g. access to quality education services in the language of the minority, access to homogeneous minority schools, and minority control of school management). The purpose of this study is not to quantify the relative importance of these factors; the data and analysis methods used simply describe the current situation with regard to changes in the disparities.

We now turn to Table II-6, which reevaluates the preceding variables as they apply to the homogeneous schools available to official language minorities and provided by school

boards. Paragraph 23(3)(b) pertains specifically to this type of school because it refers to "minority language facilities"²⁷. For this reason our study of the current official language minority situation in terms of the rights conferred by section 23 of the Charter is also concerned with this aspect of education services.

In these schools, the language of instruction and administration is the language of the official language minority and most of the pupils belong to the minority group (cf. Chapter I). The language of the majority is learned as a second language. According to the objectives of section 23, these schools are the best equipped to meet minority education needs and preserve minority culture and language.

The method used to establish the other Table II-5 variables was repeated for Table II-6. The three qualifications described above also apply²⁸.

Table II-6

Primary and secondary homogeneous public schools, by province and territory, 1986

Homogeneous schools		Enrolment (grades 1-12)	Minority population (6-17 years)	Enrolment MMT (in %)	Eligible enrolment	Enrolment EC (in %)
a		b	c	d	e	f
British Columbia	2	357	2 602	13.7	14 815	2.4
Alberta	2	526	5 318	9.9	21 093	2.5
Saskatchewan	3	166	1 762	9.4	10 722	1.6
Manitoba	15	3 230	6 681	48.3	17 754	18.2
Ontario	313	72 555	70 462	103.0	135 612	53.5
Quebec*	308	99 190	86 946	114.1	121 513	81.6
New Brunswick	150	43 737	46 350	94.4	57 331	76.3
Prince Edward Island	2	497	706	70.4	2 280	21.8
Nova Scotia	12	1 959	3 791	51.7	10 516	18.6
Newfoundland	0	0	267	0	1 117	0
Northwest Territories and Yukon	0	0	168	0	674	0
Total: Minorities						
– Francophone	499	123 027	138 107	89.1	271 914	45.2
– Anglophone	308	99 190	86 946	114.1	121 513	81.6

* French and English schools.

Sources:

See Table II-5.

In 1986, 499 homogeneous public school board schools out of a total of 630 (79.2%) offered instruction in French to Francophone minorities (Table II-5). Ontario, with 313 homogeneous schools (62.7%) that, in principle, serve the Francophone population, has the best record; New Brunswick, with 150 homogeneous schools (30%), follows.

Enrolment in homogeneous schools operated by school boards exclusively for Francophone minorities across Canada totalled 123,027 pupils out of 136,903 (Table II-5) in public schools of all categories offering instruction in French to Francophone minorities. In New Brunswick and Ontario, a large proportion of the Francophone enrolment is educated in homogeneous schools. However, few such schools exist in the other provinces. In British Columbia, Alberta, Saskatchewan, Newfoundland and Prince Edward Island, two or three schools serve an entire province. In 1986 five provinces (Nova Scotia, Northwest Territories/Yukon, Saskatchewan, British Columbia and Newfoundland) still had no homogeneous secondary school operated by a school board.

In 1986, in Quebec, the Anglophone minority was served by 308 homogeneous schools out of a total of 374 (82.4%) school board schools providing instruction in English (Table II-5). The figures show that a large proportion (89.2%) of Anglophone minority pupils attended homogeneous schools (99,190 out of 111,178).

When we examine, for each province and territory, school enrolment in homogeneous schools operated by school boards as a ratio of minority mother tongue population (French or English, French and English) of school age (6 to 17 years), we find the following situation:

- in Quebec in 1986 the equivalent of 114.1% of school-age English mother tongue population was being educated in that language in homogeneous English schools operated by school boards;
- in Ontario the equivalent of 103% of school-age French mother tongue population was being educated in that language in homogeneous schools;
- in New Brunswick 94.4% of the school-age Francophone population was being educated in homogeneous schools (Prince Edward Island, 70.4%);
- in Nova Scotia and Manitoba, the equivalent of one half the school-age Francophone population was being educated in homogeneous schools (51.7% and 48.3% respectively); and
- in the other four provinces (British Columbia, Saskatchewan, Alberta and Newfoundland) and the Northwest Territories/Yukon, less than 15% of the school-age Francophone population was being educated in homogeneous, French-language schools.

Turning to the disparity between minority school enrolment and homogeneous schools operated by school boards in 1986 and our calculation of the child population eligible under paragraph 23(1)(a) of the Canadian Charter of Rights and Freedoms, the following facts emerge:

- in Quebec the equivalent of 81.6% of children eligible under paragraph 23(1)(a) would be educated in English homogeneous schools operated by school boards if the provision were applied in the province;
- in New Brunswick the equivalent of 76.3% of the school-age population eligible under paragraph 23(1)(a) was educated in French in public homogeneous schools;
- Ontario homogeneous schools served a student population equivalent to 53.5% of the school-age population eligible under paragraph 23(1)(a);
- the equivalent of one eligible child in five was educated in a homogeneous French school in Prince Edward Island (28.8%), Nova Scotia (18.6%) and Manitoba (18.2%); and
- in the other four provinces (Newfoundland, Saskatchewan, British Columbia and Alberta) and in the Northwest Territories/Yukon, the equivalent of less than 5% of the school-age (6-17 years) population eligible under paragraph 23(1)(a) of the Charter was educated in French in a homogeneous school.

In Canada as a whole a total of 271,914 French-language minority children were eligible in 1986 under paragraph 23(1)(a) of the Charter. However, only 123,027 children were actually enrolled in homogeneous schools, the equivalent of 45.2% of those eligible. Among the English-language minority in Quebec, the equivalent of 81.6% (99,190) of the school enrolment that would be eligible under paragraph 23(1)(a) (121,513 children) was enrolled in a public, English-language homogeneous school operated by a school board. Although, as we have noted, the constitutional provision does not apply here, the enrolment generated by the criteria in force is lower than the figures generated by the paragraph 23(1)(a) criterion. Enrolment in the private sector in Quebec provides a partial explanation of the disparity. Further details are given in the section on Quebec.

Table II-7 compares the minority mother tongue population of 6- to 17-year old children to the number of children eligible under paragraph 23(1)(a). This gives a clearer picture of the weakness in the demand for official language minority services as it relates to the primary aim of section 23, i.e. the vitality of official language minorities.

Table II-7

Minority mother tongue population as ratio of eligible enrolment under paragraph 23(1)(a), by province and territory, 1986

	Population MMT 6-17 years a	Enrolment eligible b	MMT/EC (in %) c
British Columbia	2 602	14 815	17.6
Alberta	5 318	21 093	25.2
Saskatchewan	1 762	10 722	16.4
Manitoba	6 681	17 754	37.6
Ontario	70 462	135 612	52.0
Quebec*	86 946	121 513	71.6
New Brunswick	46 350	57 331	80.9
Prince Edward Island	706	2 280	31.0
Nova Scotia	3 791	10 516	36.1
Newfoundland	267	1 117	23.9
Northwest Territories and Yukon	168	674	24.9
Total: Minorities			
— Francophone	138 107	271 914	50.8
— Anglophone	86 946	121 513	71.6

* Ratio of minority mother tongue children (MMT) to those eligible under paragraph 23(1)(a) of the Charter (EC).

Sources:

See Table II-5.

Following is a summary of the findings which emerge from the table:

- in New Brunswick the equivalent²⁹ of 80.9% of school-age children (6-17 years) eligible under paragraph 23(1)(a) had French as a mother tongue (French only, French and English);
- in Quebec the equivalent of 71.6% of children who would be eligible under paragraph 23(1)(a) had English as a mother tongue (English only, French and English);
- in Ontario the equivalent of one-half the eligible children established by paragraph 23(1)(a) had French as a mother tongue (French only, French and English);
- in Manitoba and Nova Scotia the equivalent of one-third of the children eligible under paragraph 23(1)(a) had French as a mother tongue (French only, French and English), or 37.6% and 36.1% respectively;

- in Alberta, the Northwest Territories/Yukon and Newfoundland, the equivalent of one eligible child in four had French as a mother tongue; and
- in Saskatchewan and British Columbia, the equivalent of fewer than one eligible child in five had French as a mother tongue.

These findings reveal the high rate of assimilation among all the Francophone minorities, with the exception of that of New Brunswick. This province may be considered a good indicator of a level of services that meets the needs of a large proportion of the children eligible under paragraph 23(1)(a).

Furthermore the data on enrolment eligible under paragraph 23(1)(a) are based on a specific methodological option (an eligible parent whose mother tongue(s) is (are) French and/or English). To conclude the analysis, Table II-8 shows the number of eligible children³⁰ (6-17 years) on the basis of two different definitions of mother tongue. The first is the most restrictive: it covers only eligible children (6-17 years) with one minority mother tongue (French or English) parent. The second definition, represents the maximum enrolment eligible under paragraph 23(1)(a): it covers all school-age children (6-17 years) with one parent who reported a minority mother tongue, whether as the sole mother tongue or one of two or three. The column showing one or two mother tongues takes the middle-of-the-road position adopted earlier.

Table II-8

Eligible enrolment under paragraph 23(1)(a), by mother tongue, 1986

	One MT*	One and two MT**	One, two or three MT***
British Columbia	12 627	14 815	15 484
Alberta	17 800	21 093	21 712
Saskatchewan	9 351	10 722	10 908
Manitoba	15 182	17 754	18 027
Ontario	114 883	135 612	138 328
Quebec*	98 555	121 513	130 615
New Brunswick	52 686	57 331	57 398
Prince Edward Island	1 947	2 280	2 280
Nova Scotia	8 517	10 516	10 631
Newfoundland	856	1 117	1 140
Northwest Territories and Yukon	584	674	703
Total: Minorities			
— Francophone	234 433	271 914	276 611
— Anglophone	98 555	121 513	130 615

Sources:

- * Enrolment determined on the basis of number of 6 to 17-year old children with one minority mother tongue parent (French, English in Quebec).
- ** Enrolment determined on the basis of number of 6 to 17-year old children with one minority mother tongue parent, one mother tongue (French, English in Quebec) or two (French and English).
- *** Enrolment determined on the basis of number of 6 to 17-year old children with one minority mother tongue parent, one mother tongue (French, English in Quebec), two (French and English, French and other or English and other in Quebec), or three.

In fact, the enrolment eligible under paragraph 23(1)(a) in Quebec, if the paragraph were in force, is the most directly affected by the mother tongue definition selected. Here, 22,958 children (18.9%) had one parent who reported both French and English as mother tongues (121,513 minus 98,555); 9,102 additional children (7.0%) had one parent whose mother tongue was "French and other" or "French, English and other" (130,615 minus 121,513). The methodology selected for defining mother tongue substantially reduces the sample (32,060 children).

For French-language minority children, 37,481 (13.8%) had one parent who reported both French and English as mother tongue (271,914 minus 234,433). However, only 4,697 additional children (1.7%) had one parent whose mother tongue was "English and other" or "French, English and other" (276,611 minus 271,914). For this minority the determining variable rests on reports of two mother tongues (French and English).

C. CONTEXT

The overview continues with the summary of conditions governing application of section 23 in each province and territory. This is followed by a brief description of the management system used to implement section 23 in the provinces and territories.

1. Conditions in which section 23 rights are exercised

Table II-9 summarizes the conditions established by provincial and territorial governments to ensure application of section 23 in 1989. The table includes:

- *the right in question*, access to instruction as such or participation in school management;
- *the type of application considered*, e.g. obtaining a class, curriculum or school;
- *the number of pupils required* to justify the request;
- *the applicants authorized* to formulate the request;
- *the designated authority* empowered to assess the request; and
- *the legal document* which establishes the procedures.

In Ontario three types of rights are cited: the right to instruction and the right to management in two distinct contexts (advisory committees and minority language "sections").

Table II-9

Summary of conditions for exercising section 23 rights, by province and territory

British Columbia:

Right in question:	Instruction
Application considered:	For obtaining a class in the programme cadre de français
Number of pupils required:	Primary – 10 pupils, secondary – 15 pupils
Applicants authorized:	Parents resident in a school district
Designated authority:	Majority school board
Procedure established by:	Ministry of Education policy (1987)

Alberta:

Right in question:	Instruction
Application considered:	For obtaining a class or a school
Number of pupils required:	Left to the discretion of school boards
Applicants authorized:	Left to the discretion of school boards
Designated authority:	Majority school board
Procedure established by:	Ministry of Education policy (1988)

Saskatchewan:

Right in question:	Instruction
Application considered:	For obtaining a programme cadre de français class
Number of pupils required:	15 pupils per class for three consecutive grades
Applicants authorized:	Advisory committee, parents or school board
Designated authority:	Lieutenant-governor in council on recommendation of the Minister of Education
Procedure established by:	Saskatchewan Education Act (1978)

Manitoba:

Right in question:	Instruction
Application considered:	For obtaining a class
Number of pupils required:	23 pupils
Applicants authorized:	Parents resident in a school district
Designated authority:	Majority school board
Procedure established by:	Public Schools Act (1980)

Ontario:

1. Right in question:	Instruction
Application considered:	For obtaining instruction in the language of the minority
Number of pupils required:	One
Applicants authorized:	Parents resident in a school district
Designated authority:	School board
Procedure established by:	Ontario Education Act (1986)

Ontario:

2. Right in question:	Management
Application considered:	Advisory committee where the school board purchases services from another school board
Number of pupils required:	10 or more
Applicants authorized:	School district ratepayers
Designated authority:	Majority school board
Procedure established by:	Ontario Education Act (1986)

Ontario:

3. Right in question:	Management
Application considered:	Minority language section
Number of pupils required:	300 or 10% of school enrolment
Applicants authorized:	None, right granted de facto
Designated authority:	Ontario Education Act (1986)

Quebec:

Right in question:	Instruction
Application considered:	For obtaining instruction in the language of the minority
Number of pupils required:	A child who has a parent, brother or sister who received or is receiving primary instruction in English in Canada
Applicants authorized:	Parent
Designated authority:	School board
Procedure established by:	Charter of the French Language (1978)

New Brunswick:

Right in question:	Management
Application considered:	Minority school board
Number of pupils required:	30 pupils per elementary grade
Applicants authorized:	Parents resident in a school district
Designated authority:	Ministry of Education
Procedure established by:	New Brunswick Schools Act (1981)

Nova Scotia:

Right in question:	Instruction
Application considered:	For obtaining the designation "Acadian school"
Number of pupils required:	Not specified
Applicants authorized:	Majority school board
Designated authority:	Governor general in council on recommendation of the Minister of Education
Procedure established by:	Nova Scotia Education Act (1986)

Prince Edward Island:

Right in question:	Instruction
Application considered:	For obtaining instruction in French
Number of pupils required:	15 in two consecutive grades
Applicants authorized:	Parents resident in a school district
Designated authority:	Minority school board
Procedure established by:	School Act amendment (1990)

Newfoundland:

Right in question:	Not specified
Application considered:	Not specified
Number of pupils required:	Not specified
Applicants authorized:	Not specified
Designated authority:	Not specified
Procedure established by:	No procedure established

Northwest Territories/Yukon:

Right in question:	Not specified
Application considered:	Not specified
Number of pupils required:	Not specified
Applicants authorized:	Not specified
Designated authority:	Not specified
Procedure established by:	No procedure established

With regard to the number of pupils required for the *right to instruction*, it emerges that three provinces (Ontario, Quebec and New Brunswick) consider that one qualified pupil justifies instruction in the language of the minority. However, the eligibility criteria in force in these provinces do not necessarily correspond to the section 23 criteria.

Only Ontario applies the three criteria established by section 23 in their entirety: the paragraph (1)(a) criterion based on mother tongue of one parent; the paragraph (1)(b) criterion based on the language of primary instruction received in Canada by one parent; and the subsection (2) criterion based on the language of primary or secondary instruction received in Canada by a brother or sister. Any child who meets any one of these criteria may have access to instruction in French. Parents simply apply to the district school board, which supplies the service (instruction in French) or purchases it from another school board. Ontario is in fact the only province to recognize, formally and without exception, all children eligible for instruction in French.

As noted above, paragraph (1)(a) of section 23 is not applied in Quebec in accordance with the exception provided in section 59(2) of the Charter. However, any Anglophone child who meets the criteria established under paragraph 23(1)(b) and subsection 23(2) may receive instruction in English. His or her parents need only apply to the district school board.

In New Brunswick the three section 23 criteria are applied, but with a further condition. To be admitted, a child must pass an oral examination on his or her knowledge of the French language. The condition restricts minority access to instruction, inasmuch as the instruction is only provided to children whose mother tongue is that of the minority.

Other provinces require more than one pupil for provision of instruction in the language of the minority: British Columbia (10 per primary grade), Saskatchewan (15 pupils per class in three consecutive grades), Manitoba (23 pupils per level) and Prince Edward Island (55 pupils in two consecutive grades).

The other provinces and territories (Alberta, Nova Scotia, Newfoundland and the Northwest Territories/Yukon) have not yet established criteria for determining the number of pupils required to begin providing services.

Where a number other than *one* is established, the number required to implement the right to instruction is based on the number of children corresponding to the previously established minimum for application for services. In British Columbia, Saskatchewan, Manitoba and Prince Edward Island the number of pupils required for provision of services is interpreted as a group application rather than a recognized individual right of each eligible child.

Only Ontario and New Brunswick have established a minimum number of pupils above which the authorities automatically give members of the minority in question school management authority. In Ontario the minimum is 300 pupils enrolled in a minority program or 10% of total enrolment within a school board. When the condition is met, the Ontario government establishes, within the majority school board, a "section" specifically responsible for managing matters that affect minority instruction. In this way Ontario hopes to satisfy the management rights conferred by section 23(3)(b).

In New Brunswick 30 pupils per elementary grade are required for the minority to be given a minority school board. The board, initially made up of three members appointed by the Minister of Education, operates for all practical purposes in the same way as a regular school board, and manages instruction to the minority within a district where a majority school board already exists and operates. In practice, however, the minority school boards have gradually become ordinary school boards. Since 1981 the three minority school boards serving Francophones have been transformed into elected school boards similar to majority boards. The only minority school board remaining is the minority Anglophone board in Edmundston.

2. Management systems

This section presents an overview of the school management systems serving majority groups in the provinces and territories. It describes the context and systems into which any management mechanism designed to meet official language minority needs in accordance with the rights conferred by paragraph 23(3)(b) of the Charter must fit.

Most provincial school management systems include three decision-making levels (school boards, ministry of education and local committees). The degree of control exercised by the ministry of education varies widely from province to province³¹. In the Maritimes and Quebec, the education systems are more centralized than in the other provinces and, as a result, their ministries of education delegate fewer powers to school boards and parent committees.

In all Canadian provinces (but not in the territories) the school board is the regional and/or local body responsible for school administration³². The school board is managed by a board of trustees. In most provinces school trustees are elected by residents of the area under the authority of the school board.

There are some exceptions to the school board structure described above. Whereas in Newfoundland and Nova Scotia one-third of trustees are elected, in the other provinces all of them are. The Metro Toronto School Board and the Conseil scolaire de l'Île de Montréal are "super boards" made up of delegates from member school boards. The super boards are responsible for allocating the operating budgets to individual school boards, which are responsible for managing them.

The local decision-making level is represented by parent and/or school committees. The government support given to these committees varies from province to province³³.

The school management models adapted to the specific needs of official language minorities are of four main types (advisory, contractual, representational and paralleling majority structure³⁴). Some models have been implemented, others are still in the planning stage. The advisory models (British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia and Newfoundland) have the same structure as majority parent committees and school

committees. The minority is encouraged to advise the majority school board, but has no management rights. The contractual models (Saskatchewan and Alberta) attempt to delegate majority school board responsibilities to a group of minority parents with a view to giving the latter a voice in running the affairs of a specific school. The representational models (Ontario) establish mechanisms to be used by a minority group with exclusive decision-making rights regarding minority language instruction of the region.

Since 1982 an interesting experiment in governance has been tried. It involves consolidating or implementing management models with structures paralleling those designed for the majority. Pilot projects have been carried out in New Brunswick, Ontario, Saskatchewan, Prince Edward Island, Quebec and, more recently, British Columbia. In New Brunswick the school system, organized on a linguistic basis, has Francophone and Anglophone school boards. The three Francophone minority school boards established in 1981 have evolved into regular school boards. In Ontario two homogeneous Francophone school boards were established in 1988, one in Toronto and one in Ottawa-Carleton. They are the only two school boards in Ontario based on language. In Saskatchewan "Fransaskois" school boards will soon be in operation. The structure, which includes a general provincial board, was established as the result of a federal/provincial agreement. In Prince Edward Island the Unit 5 Francophone school board has become a provincial school board.

In Manitoba a regional school board model under the aegis of a provincial school board for the Francophone minority is under study, and in British Columbia the minority is currently studying a regional school board model (three or four regions).

In Quebec language-based school boards were established by Bill 107. The provisions of the Act which grant management rights to the Anglophone minority will not come into force until the Act's constitutionality is ratified by the courts. It is currently referred to the Quebec Court of Appeal to determine if the Act conflicts with the denominational (Catholic and Protestant) rights conferred by the Constitution Act, 1867.

Overall, important progress has been or is being made in obtaining adequate management methods for official language minorities. More remains to be done to make effective mechanisms universally available to official language minorities.

The following sections describe the official language minority education in each province and territory and trace the factors which have affected recognition of the rights conferred by section 23 of the Charter of Rights and Freedoms, specifically those related to minority language instruction (paragraph 23(3)(a)) and management (paragraph 23(3)(b)).

The sources of the data presented in the following sections include minority associations, provincial and territorial ministries of education, the special Statistics Canada compilation and laws and regulations in force. The excellent study by P. Foucher (1985) and the study by the Council of Ministers of Education (1983) are sources of additional material.

II. BRITISH COLUMBIA

A. BACKGROUND

- 1852: Founding of first schools, English and denominational. Sectarian rivalry leads to demand for non-denominational schools.
- 1871: British Columbia becomes a province of Canada.
- 1872: *An Act Respecting Public Schools* establishes non-denominational, publicly-funded education.
- 1968: As a result of a local initiative in response to demand by Francophone parents, the first “bilingual” public program is offered in Coquitlam kindergarten. The Ministry of Education approves the program, but with a reservation that 20% of the half-day program be given in English.
- 1971: The Ministry of Education, in response to parent demand, agrees that 50% of the school day will be given in French in grades 1 to 3 inclusive of the Coquitlam bilingual program. The 80% French ratio in kindergarten is unchanged.
- 1973: The first French immersion program for Anglophones, with the bilingual program incorporated, is offered to Coquitlam. The program for Francophones is not reinstated until ten years later.
- 1978: The government issues a new directive and establishes the “programme cadre de français” (PCDF) designed to provide instruction to Francophones in their mother tongue. A school board is obliged to establish a programme cadre if the parents of ten primary level pupils residing in the school district apply for it. The programme cadre is under the jurisdiction of the Ministry of Education Modern Languages Services Branch.
- 1979: The programme cadre de français begins in nine school districts with a total enrolment of approximately 200 pupils.
- 1981: The government issues a policy paper known as *Circular 146*, which defines three French programs: programme cadre pour francophones, early immersion and late immersion.
- 1984: Ecole Anne-Hébert, first homogeneous French school, opens in Vancouver.
- 1984: A coordinator is hired by the Ministry of Education for the specific purpose of meeting the needs of the programme cadre.
- 1987: The government issues a policy paper known as *Circular 39*, which provides for public funding of the programme cadre de français and emphasizes the importance of independent facilities where numbers warrant. Instruction will be in French except for the teaching of English. The policy encourages the establishment of minority advisory committees to assist school boards in which the programme cadre de français is established.
- 1987: The decision rendered by Madam Justice Patricia Proudfoot reiterates that, although section 23 guarantees access to instruction to the Francophone minority, it confers no French immersion rights on Anglophone parents.
- 1988: The Royal Commission on Education submits its report. It recommends the

adoption of policies and procedures to enable parents and communities to advise school boards, specifically through advisory committees, and recognizes the right of the official language minority to choose the language of instruction for its children.

- 1988: “Opération loi scolaire” is launched by the Association des parents du programme cadre de français (APPCF) and the Fédération des Franco-Colombiens (FFC). The campaign targets community awareness and recognition by the courts of section 23 rights.
- 1989: Bill 67 empowers the Lieutenant-Governor of British Columbia to make regulations under section 23 of the Charter.
- 1990: A management model for regional school boards (three or four) is proposed by the APPCF.

B. CURRENT CONTEXT

1. Statistics

According to the 1986 census, 45,845 persons (1.6% of British Columbia’s total population) reported French as a mother tongue³⁵, a drop of 0.1% from the 1981 figure and a return to the 1976 level (Table II-10). If we add the number of respondents who reported two mother tongues (French and English) to the number who reported French only, we obtain a 1986 total of 50,925 French mother tongue individuals³⁶. This figure gives a more accurate picture of the population contemplated by section 23, which does not require a single mother tongue.

Furthermore, the province’s total population has climbed 16% since 1976 and 5.1% since 1981, indicating that the official language minority has grown at a far slower rate than the majority and will, in the long term, become more and more of a minority.

Table II-10
Total French mother tongue population , British Columbia, 1976, 1981, 1986

Total population		FMT*	FMT/ total population (in %)
1976	2 466 605	38 430	1.6
1981	2 744 465	45 615	1.7
1986	2 883 375	45 845 **	1.6
1986	2 883 365	50 925 ***	1.8

* FMT: French mother tongue
** Data adjusted by Statistics Canada for purposes of comparison with previous years.
*** One mother tongue (French) and two mother tongues (French and English).
Source: Statistics Canada.

British Columbia is one of a group of provinces which has an official language minority classified as intermediate³⁷; the others are Alberta (2.6%), Saskatchewan (2.6%) and the Northwest Territories and Yukon (3.0%). Historically, the province was originally settled by European immigrants (mainly French), who were *coureurs de bois* and adventurers. In 1838, inhabitants of French origin made up approximately 60% of the population of European origin and played an important role in colonizing the province (Dufresne et al. 1988, p. 271). The first missionaries arrived in 1840, followed in the 1880s by the first wave of Chinese immigrants.

The current Francophone population is mainly the result of relatively recent immigration related to the province's strong economic growth in the 1950s and 1960s. Savas (1988) reports that, in 1988, 85.8% of Franco-Columbians were not born in the province. They came mainly from Quebec (42.4%), Saskatchewan (13.3%), Ontario (12.7%) and Alberta (12.0%). The Francophone population is clustered around Vancouver (Burnaby, Coquitlam, Surrey, Delta, Richmond, West Vancouver), in the Okanagan, and in Abbotsford, Prince George and Nanaimo.

It was not until 1968, nearly a century after the province joined Confederation, that the first partially French program for Francophones (80% of the pre-school kindergarten school day) was offered in Coquitlam. Five years later the program was merged with the French immersion program for Anglophones. It was only in 1985 that it reappeared, in the form of the programme cadre de français.

According to the British Columbia Ministry of Education, the "programme cadre de français" (the name of the British Columbia's French-language minority instruction program) was offered in 1986 in 36 schools (*Enrolment Report, 1986*). All these schools (with the exception of two homogeneous schools) are two-stream and three-stream facilities that offer French classes and English and/or immersion classes under one roof. Because the criteria for admission to the programs were not defined according to section 23, the enrolment figures available may include pupils other than children eligible under the Charter. Ministry figures for 1986 show that the programme cadre was offered to 1,525 pupils (Table II-11) from grade 1 to grade 12 in a total of 22 school districts. Total enrolment represented the equivalent of 58.6% of the total French mother tongue school-age population³⁸ 6 to 17 years of age³⁹. At most, the enrolment represents the equivalent of 10.3% of children eligible under paragraph 23(1)(a) of the Charter; our count is 14,815 eligible 6 to 17-year old children⁴⁰.

In 1986 in British Columbia the equivalent of one-half of minority language children were educated in that language. This means that the other half of the minority language school population risked assimilation during the primary and secondary school years.

Furthermore the equivalent of one child in five (17.6%) eligible under paragraph 23(1)(a) had French as a mother tongue; the equivalent of one child in ten (10.3%) eligible under paragraph 23(1)(a) received instruction in the language of the minority.

Table II-11

Public schools providing instruction to the minority, British Columbia, 1986

Schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
36	1 525	2 602	58.6	14 815	10.3

Sources:

* British Columbia Ministry of Education. *French Language Education in British Columbia. 1986-87 Enrolment Report*. 1986.

** See Table II-5.

Table II-12

Homogeneous public schools, British Columbia, 1986

Homogeneous schools*	Enrolment (grades 1-8)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
2	357	2 602	13.7	14 815	2.4

Sources:

* British Columbia Ministry of Education. *French Language Education in British Columbia. 1986-87 Enrolment Report*. 1986.

** See Table II-5.

In 1986 two homogeneous French schools⁴¹ (grades 1-8) served a Francophone school population made up of the equivalent of 13.7% (357 children) of the total population of French mother tongue school-age children (6-17 years) (Table II-12). The schools are Anne-Hébert in Vancouver and Victor-Brodeur in Victoria. The population of the two schools is equivalent to 2.4% of the enrolment eligible under paragraph 23(1)(a).

Since 1986, progress in terms of homogeneous schools has been significant. In 1987 a third school, in North Vancouver, became homogeneous. Between 1986 and 1989, homogeneous school enrolment (grades 1-10) rose 33.9% (121 pupils). In the same time period, enrolment (grades 1-12) in schools offering programme cadre instruction increased 11.1% (to 1,694 pupils). Table II-13, taken from the British Columbia Ministry of Education *Enrolment Report* for 1986-87 and 1988-89 summarizes the data.

For the 1989-90 school year, Statistics Canada estimates the enrolment (grades 1-12) in schools offering programme cadre instruction to be 1,825 pupils, an increase of 7.7% over the 1988 enrolment and 19.7% over the 1986 figure.

Table II-13

Comparison of enrolments and public schools, British Columbia, 1986-87, 1988-89

	1986-87	1988-89	% Increase
Enrolment in schools offering instruction in the language of the minority (grades 1-12)	1 525	1 694	11.1
Number of schools	36	39	8.3
Enrolment in homogeneous schools (grades 1-8 and grades 1-10)	357	478	33.9
Number of schools	2	3	50.0

Source: British Columbia Ministry of Education, *Enrolment Report, 1986-87 and 1988-89*.

Because British Columbia's Francophone minority population is largely concentrated in the Vancouver area and minimal elsewhere in the province, Franco-Columbians seem to favour the idea of setting up small schools (Hales, 1988), an approach which can be every bit as effective as (and perhaps more effective than) one involving large schools and instructional units (Coleman and Larocque, 1986). Setting up small schools may in fact give a small population access to instruction in a minority program since, according to this research, the standard of instruction and education in a small school compares favourably with that provided in a large school.

2. Description of school system

The British Columbia school system is neutral (non-denominational) and religious instruction is permitted only in independent (private) schools. The province is divided into 92 school districts run by school boards. Each board is managed by a 3, 5, 7 or 9 member board of trustees, and is established at the discretion of the Minister of Education for rural and urban population groups. Trustees are elected every three years.

The British Columbia School Act, (Bill 37) (1989), makes brief reference to section 23 of the Charter. Paragraph 5(4) of section 2 empowers the Lieutenant-Governor in Council to make regulations:

- respecting the provision of educational programs in languages other than English,
- to give effect to section 23 of the Canadian Charter of Rights and Freedoms, and
- determining the manner in which a power, duty or function of a board may be performed or exercised under this Act with respect to students referred in subsection (2).

In practice the 1987 *Circular 39*, a ministerial policy paper, regulates the procedures for the programme cadre de français (PCDF). The Modern Languages Services Branch of the Ministry of Education issues directives related to this policy:

- “where numbers warrant”: the equivalent of ten full-time pupils at the primary level, and 15 pupils at the secondary level to establish a programme cadre;
- criteria for access to PCDF: paragraphs 23(1)(a) and 23(1)(b) and subsection 23(2);
- homogeneous facilities: where numbers warrant;
- transportation of pupils to French schools: same as for Anglophone schools;
- teacher selection: excellent knowledge of oral and written French, and of French-Canadian history, culture and tradition;
- subjects taught: complete range of grade 1-12 courses by 1992;
- teaching of English: 10% to 20% of the school day after grade 2;
- financing: startup and expansion funds from federal government; support grants, for all pupils, from provincial government; and
- use of authorized textbooks.

Although the policy is not a part of the School Act, it serves as a guide and leaves the management of homogeneous schools and French classes in English or immersion schools to the discretion of Anglophone public school boards.

The Ministry policy does suggest the formation, by parents of pupils enrolled in the programme cadre de français, of advisory committees to the Anglophone school boards. The policy reads as follows:

School boards will assist francophone parents whose children attend Programme Cadre de Français to form an Advisory Committee to the school board. The mandate of the Committee may vary from district to district and should be worked out by the Committee and the School Board.

The Advisory Committee should be granted the maximum amount of responsibility with respect to Programme Cadre within the context of the necessary administrative procedures required for conducting the business of the whole district. (Province of British Columbia, 1987, pp. 4-5)

Since the Ministry policy was established, the new 1989 School Act requires the formation of parent committees in majority schools. The Act also limits to one the number of parent committees per school.

The problems inherent in advisory committees obviously affect the British Columbia French-language minority. As parent committees and advisory committees to school boards previously had no legal status, the Francophone minority, with a total of only five advisory

committees, had little impact. Under the new rules, if only one committee per school is permitted, the five advisory committees may well disappear when the majority parents form their own committee.

Advisory committees have no authority and no responsibility: they simply advise. Since school boards make all decisions deemed to meet both majority and minority needs, advisory committees can be a step toward more satisfactory and standardized school management for the minority. Parents continue to work at the local level and the Ministry of Education is already being pressured to establish a provincial school board. This is in fact the recommendation of a report submitted by the Association du programme cadre de français in 1990. Xatruch suggests that the province could be divided into three or four regional French-language school boards on a double boundary school map.

When it comes to providing education services to the minority, majority school boards are "difficult; they do not understand", in the words of one committee chairman. Each victory and each gain requires unstinting, hard work. Obtaining a course, premises, a school, transportation, language upgrading courses, a budget, or anything else, is a one-step-at-a-time, extremely time-consuming process.

The *Circular No 39* policy leaves interpretation of rights and services to the 22 school boards which offer the programme cadre de français. The boards decide on provision of services and standards. Definition of rights conferred by section 23 is fragmented at the discretion of a multiplicity of local school boards.

On 21 March 1989 the Association des parents du programme cadre de français (APPCF) and the Fédération des Franco-Colombiens (FFC) launched their "Opération loi scolaire" campaign. One of the aims of this joint operation was to make the Francophone communities aware of the justification for minority language education. Court challenges were initiated, alleging that:

1. the province has not fulfilled its legislative duty;
2. the province has not required school boards to provide programs or schools;
and
3. the province has denied Francophones management rights (APPCF, 1989, p. 2).

Taking court action to demand rights promotes discussions with government authorities. The filing of the court challenge in British Columbia coincides with the new School Act, and adds to the pressure for recognition of minority rights to instruction and education management. However, the recommendations of the Royal Commission on Education (1988) take a more centralized view, one stressing increased government control (Peters, 1989, p. 14). Because recognition of official language minority rights must be clear and unequivocal, interpretation by the courts is a very important factor.

C. SUMMARY

In British Columbia, gains by the Francophone minority are made slowly, although rights are constantly being renegotiated with local and majority authorities. In 1968 the Ministry of Education officially approved a program created specifically for the Francophone minority. In the past few years, the efforts and determination of parent groups have set in motion an irreversible process to have rights recognized and services provided. This is the main conclusion which emerges from the French-language minority education situation.

Since establishment of the programme cadre de français (PCDF) in 1979, school enrolment in programs delivering instruction to the official language minority have grown steadily (from 200 in 1979 to 1,694 in 1988-89). In 1988-89 most of the enrolment (71.8%) received instruction in 36 non-homogeneous two-stream or three-stream schools. In 1986 the equivalent of 10.3% of school-age children eligible under paragraph 23(1)(a) were being educated in programs of instruction designed for the minority. However, in 1986 there were only two homogeneous schools delivering instruction to the equivalent of 2.4% of school-age children eligible under paragraph 23(1)(a). These data suggest that, in British Columbia, research should be undertaken on designing a viable range of services to satisfy the sizeable eligible enrolment between 6-17 years of age; on the basis of paragraph 23(1)(a), 14,815 children are eligible.

On the question of school management, advisory committees have enabled the minority to oversee the instruction provided, but are deemed inadequate by the parents. Of the other mechanisms currently under study, the one involving four regional school boards seems the most promising.

III. ALBERTA

A. BACKGROUND

- 1842: First French school founded by a Catholic missionary at the Lac Sainte-Anne mission. French and English schools subsequently established under the auspices of the Catholic and Protestant churches.
- 1880: The North-West Territories Act guarantees Catholic and Protestant religious minorities the right to establish publicly funded separate (Catholic or Protestant) schools.
- 1884: The province gives the trustees in a separate school district the same rights and duties as those enjoyed in a public (i.e. non-denominational) district.
- 1892: Primary instruction in English becomes obligatory for the following subjects: reading, writing, spelling, arithmetic, geography, grammar, British history, Canadian history, English literature and French literature.

- 1896: The Ministry of Education authorizes ("permits") instruction in French to Francophones, but limits it to one hour per day.
- 1901: The teaching of any language other than English is permitted outside regular school hours, i.e. after 3 p.m.
- 1905: Alberta joins Confederation.
- 1909: The Alberta Act retains all religious minority rights and guarantees equal treatment through allocation of public funds.
- 1913: First reorganization of school districts: merging of independent districts to form consolidated districts.
- 1925: A school board may authorize French as the language of instruction for Francophones in grades 1 and 2.
- 1937: Second reorganization of school districts: merging of rural and urban districts into school divisions. Local advisory boards replace local district boards.
- 1964: The Act is amended to enable French to become the language of instruction for Francophones in grades 1-9. However the time allotted for the teaching in French varies from one grade to another: grades 1 and 2, one hour of English; grade 3, two hours of English; grades 4-9, one hour of French per day, with all authorized textbooks in English only.
- 1964: A third reorganization of school districts into large divisions (rural and municipal) and large school districts deprives Francophones of the effective management of their schools which was possible when districts were divided into small units.
- 1968: The time allotted to instruction of Francophones in French in grades 3-9 is increased to 50% of the school day.
- 1971: An amendment to the School Act and school regulations places all languages other than English on an equal footing; instruction in such classes is permitted until grade 12.
- 1978: In response to a growing interest in second language French immersion, a policy paper states that a school board must set up a French program if a local advisory board applies for it. The Language Services Branch is set up in the Ministry to support second language programs (French, German, Ukrainian and mother tongue French).
- 1982: Regulation 490-82 requires school boards who wish to deliver instruction in French to submit a resolution to that effect to the Minister of Education. They are also required to teach English a minimum of 300 minutes per week from grade 3 through grade 6, 150 minutes per week from grade 7 through grade 9 and 125 minutes from grade 10 through grade 12.
- 1983: Opening of first French-language school in Alberta based on section 23 eligibility criteria (Ecole-Georges-et-Julia-Bugnet in Edmonton).
- 1984: Opening of primary Francophone schools. The Edmonton Catholic School Board opens the Ecole Maurice-Lavallée and the Calgary Catholic School Board opens the Ecole Sainte-Anne.

- 1985: Decision by the Court of Queen's Bench in the case *Mahé et al. v. The Government of Alberta*. Francophones have a right to "a degree of exclusive management of their education".
- 1987: The "Management of Official Minority Language Education" management model is proposed to the Edmonton Francophone minority by the Edmonton Catholic School Board.
- 1987: Appeal Court decision in the *Mahé et al. v. The Queen* case. Francophones have the right to exclusive management of their schools, but the number of pupils in Edmonton is deemed insufficient for establishing a school management system parallel to the majority system.
- 1988: Opening of the Héritage de Jean-Côté school (grades 1-9). It is managed by the Regional Francophone School Board of Saint-Isidore in the Peace River region.
- 1988: The Supreme Court of Canada reiterates, in the *Mercure* case, that French and English are the official languages of Saskatchewan and Alberta.
- 1988: The Languages Act makes English the only official language of the Alberta Legislative Assembly and courts. Limited rights are retained for French.
- 1988: The School Act refers to the official language minority's right to instruction in French under section 23 of the Charter.
- 1988: A Ministry policy governs the provision of services to the official language minority. It indicates that the "sufficient number" of children eligible for instruction in the language of the minority is probably attainable in five regions of the province. However, the option of providing the services or not is left to the school boards.
- 1989: The Supreme Court of Canada hears the pleadings in *Mahé et al. v. The Queen*. It is specifically required to give its opinion on the "where numbers warrant" question, the nature and scope of school management control, the compatibility of language and denominational rights and the obligation of the Alberta government to entrench constitutional rights in provincial legislation.

B. CURRENT CONTEXT

1. Statistics

According to the 1986 census⁴², 2.4% (56,245 persons) of the Alberta population reported French as their mother tongue. While the province's total population rose 5.7% from 1981 (128,105 individuals), the proportion of the Francophone population edged down 0.4% and stabilized at the 1976 level (Table II-14).

Table II-14

Total French mother tongue population, Alberta, 1976, 1981, 1986

Total population		FMT	FMT/ total population (in %)
1976	1 838 040	44 440	2.4
1981	2 237 725	62 145	2.8
1986	2 365 830	56 245 *	2.4
1986	2 365 825	62 215 **	2.6

* Data adjusted by Statistics Canada for purposes of comparison with previous years.

** One mother tongue (French) and two mother tongues (English and French).

Source: Statistics Canada.

Because times were prosperous, immigration to Alberta was high in the late 1970s and early 1980s. The province's total population shot up 28% between 1976 and 1986. The large number of French mother tongue immigrants during this period somewhat offset the negative effects of official language minority assimilation. However, when economic conditions worsened, the minority shrank in size: in the five years between 1981 and 1986, there was a net loss of 5,900 French mother tongue individuals.

If we compile the results for respondents who reported two mother tongues (French and English) and those who reported one mother tongue (French), the French mother tongue population climbs to 62,215 individuals, or 2.6% of the province's total population⁴³. Because these figures give a more accurate picture of the population contemplated by section 23 than the adjusted data, they are of particular interest as the section does not require that only one mother tongue be reported.

Alberta is one of a group of provinces which has an official language minority classified as intermediate⁴⁴; the others are the Northwest Territories/Yukon (3.0%), Saskatchewan (2.6%) and British Columbia (1.8%). The Francophone population is concentrated mainly in Edmonton, Calgary, Peace River, Morinville-Legal, Saint-Paul-Bonnyville and Plamondon-Lac La Biche.

Historically, the Francophone population which settled in Alberta was made up mainly of *coureurs de bois* and missionaries. Before Confederation, before the First World War and in the two-year period from 1928 to 1930, the Francophone presence was gradually weakened by waves of immigration, largely from Europe (Munroe, 1974). As a result of the changing demographic situation, Franco-Albertans today have little political power, especially as ethnic minorities of Ukrainian and German origin are far more numerous. The demographic situation creates a climate in which French-language minority recognition is in competition with recognition of other ethnic groups.

Instruction in French through immersion programs has been extremely successful in Alberta. The teaching model has been copied by the German and Ukrainian minorities. The popularity of immersion has long blurred the distinction between immersion teaching of a second language and teaching the mother tongue to the official language minority. Prior to 1984, the Ministry of Education made no distinction between French mother tongue enrolment and immersion enrolment. The Francophone population was a willing partner in joint programs until the claims made by the Association Georges-et-Julia-Bugnet, which promoted public recognition of the various programs and their specific conditions.

In 1986, according to the Alberta Ministry of Education, instruction in the language of the minority was offered in 17 schools operated by provincial school boards to 1,575 pupils in grades 1-12 (Table II-15). However, 5,318 six to 17-year old children had French as a mother tongue⁴⁵. This means that, among the school-age population (6-17 years) who had French as a mother tongue, the equivalent of less than one-third (29.6%) received instruction in their mother tongue in programs designed for the minority.

The enrolment in programs of instruction for the minority is the equivalent of 7.5% of the school enrolment eligible under paragraph 23(1)(a)⁴⁶. Our count is 21,093 eligible children⁴⁷. According to Statistics Canada data, in 1992 the enrolment eligible under paragraph 23(1)(a) will climb to 22,628, an increase of 7.3% between 1986 and 1992 (Paillé, 1990).

Table II-15

Public schools providing instruction to the minority, Alberta 1986

Schools*	Enrolment (grades 1-12)**	Minority population (6-17 years)***	Enrolment FMT (in %)**	Eligible enrolment***	Enrolment EC (in %)**
17	1 575	5 318	29.6	21 093	7.5

Sources:

* Alberta Ministry of Education. *List of Alberta School Jurisdictions Offering French Language Instruction Under Sections 5 and 6 of the School Act*. 1989.

** Alberta Ministry of Education. *Information Bulletin*, 1989, p. 27.

*** See Table II-5.

Table II-16

Homogeneous public schools, Alberta, 1986

Homogeneous schools*	Enrolment (grades 1-8)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
2	526	5 318	9.9	21 093	2.5

Sources:

* Alberta Ministry of Education. *List of Alberta School Jurisdictions Offering French Language Instruction Under Sections 5 and 6 of the School Act*. 1989.

** See Table II-5.

In 1986 two homogeneous French schools⁴⁸ served a total enrolment of 526 Francophone pupils in grades 1-8, the equivalent of 9.9% of all French mother tongue school-age children (6-17 years) (Table II-16). The schools are the Maurice-Lavallée school in Edmonton and the Sainte-Anne school in Calgary. The total homogeneous school enrolment represents the equivalent of 2.5% of the enrolment eligible under paragraph 23(1)(a).

In 1988 a third homogeneous school, the Héritage de Jean-Côté school, opened in Peace River. It provides instruction to 207 pupils in grades 1-9, and was established under the authority of the Saint-Isidore Francophone Regional School Board.

Rates of assimilation for the school-age generation are high in Alberta. On the basis of the data compiled from 1986 Census results, only the equivalent of 25.2% of the 6 to 17-year old children eligible under paragraph 23(1)(a) learn French as a mother tongue. The equivalent of 74.8% of school-age children are assimilated into the language of the majority. For this reason language upgrading courses have been set up to "francize" the pupils whose mother tongue is English but whose parents are eligible for instruction under paragraphs 23(1)(a) and 23(1)(b) and subsection 23(2).

The progress made between 1986 and 1989 is illustrated in Table II-17. For purposes of comparison with the other Canadian provinces, we exclude statistics on (1) early childhood services, (2) the 33 pupils who attended Collège Mathieu in Gravelbourg, Saskatchewan in 1988-1989, and (3) the 45 pupils who, in 1988-1989, took only the "Langue et littérature" course in grades 10, 11 and 12.

Table II-17

Comparison of enrolments and public schools, Alberta, 1986-87, 1988-89

	1986-87	1988-89	% Increase
Schools providing instruction	17	18	5.6
Enrolment (grades 1-12)	1 575	1 912	21.4
Homogeneous schools	2	3	50.0
Enrolment: grades 1-8 grades 1-10	526	943	79.3 %

Source: Alberta Ministry of Education, *Information Bulletin* (1989, p. 27), *List of Alberta Elementary Schools* and *List of Alberta Secondary Schools*.

In 1988-89, 12 school jurisdictions, including one DND school in Medley, offered instruction to the Francophone minority. Between 1986-87 and 1988-89, enrolment rose 21.4% (337 pupils) in schools delivering instruction to the minority, and 79.3% (417 pupils) in homogeneous schools.

Further progress has been made. In September 1989, a new homogeneous school opened in Edmonton and Ecole Maurice-Lavallée became a primary and secondary school following a transfer of the Francophone enrolment from the J.H. Picard school.

For the 1989-90 school year, Statistics Canada estimates enrolment in grades 1-12 of schools offering programs of instruction to the Francophone minority to be 1,930 pupils, an increase of 1% over 1988 enrolment and 26.6% over 1986 figures.

2. Description of school system

A review of the School Act was adopted in 1988 and promulgated on 31 December. It was the outcome of the work done by the Policy Advisory Committee for the School Act Review, which published *Partners in Education* in 1985. Under the terms of the School Act, the province has all constitutional responsibility for education in Alberta. The Act is considered more centralist than the act it replaced, and numerous powers remain in the hands of the Lieutenant Governor in Council (Peters, 1989). On the subject of language, it specifies:

- 4) Every student is entitled to receive school instruction in English.
- 5) (1) If an individual has rights under section 23 of the Canadian Charter of Rights and Freedoms to have his children receive school instruction in French, his children are entitled to receive that instruction in accordance with those rights wherever in the Province those rights apply.
- (2) The Lieutenant Governor in Council may make regulations respecting anything that may be required to give effect to subsection (1).
- 6) (1) A board may authorize the use of French or any other language as a language of instruction.
- (2) The Minister may make regulations governing the provision of instruction in any language authorized under subsection (1).

The reference to official language minority rights begins by recognizing the authority of the Minister and the Lieutenant Governor in Council. The clause "wherever in the Province those rights apply" casts doubt on eligibility to the right, which is to be interpreted by the Minister. Instruction in French is placed on the same footing as instruction in all languages other than English.

The School Act specifies that the Minister of Education may issue decrees in four specific areas: (1) education goals and standards, (2) programs of instruction for all schools, (3) programs of instruction submitted by a school board, and (4) the right of a school board

to give religious instruction. The Minister may also make regulations to govern a number of areas, including:

- inspection of pupils, teachers, schools and program of instruction;
- establishment and dissolution of school districts or divisions;
- credits, certificates and diplomas;
- basic per pupil grants to school jurisdictions;
- hiring superintendents; and
- pupil evaluation.

The Minister has vast powers, and the Language Services Branch, established in 1978, is responsible for obtaining services in what are called second languages (e.g. French (immersion and minority), Ukrainian, German, Spanish, Italian). More specifically the Language Services Branch is responsible for implementing the French programs, facilitating access to services, and planning, preparing and distributing the programs (Council of Ministers of Education, 1983). The province is divided by the Ministry of Education into six zones or regions managed by ministry regional offices. Francophone advisors are available in four of the regions (Calgary, Edmonton, Grande Prairie and Red Deer).

The cornerstone of Alberta school administration is still the school board. It is on the advice of the school board that the Minister delegates such administrative responsibilities as:

- establishing policies and regulations on administering, managing and operating educational services and school programs, and informing employees of their content;
- keeping insurance policies in force;
- appointing a superintendent, subject to approval by the Minister;
- maintaining, repairing and providing property and goods and ensuring that everything is kept in good condition;
- holding an annual meeting; and
- entering into agreements with other school districts and/or municipalities with a view to promoting recreational, community and educational services.

The school board can also make use of the following powers: designing and offering courses, programs and teaching material in its schools and allowing school committees to be established. It may delegate all powers except the following to committees or employees: drafting by-laws, closing a school, formulating a requisition to a municipality, hiring or suspending a teacher or holding public hearings.

The school district is the basic unit of the Alberta school system. Since 1937, local administrative responsibility has been exercised in part by school divisions, formed by merging rural, village or city districts. In 1986, 146 school jurisdictions managed the

education services of some 1,496 schools. A district or a division may be public and non-denominational or separate and denominational. A double boundary school maps divides the province into 91 public and 55 separate districts. The word “separate” in Alberta signifies denominationality that is not that of the majority. For example, although it is an exception, Saint-Albert has a public Catholic school board and a Protestant separate district operating in the same area.

The system of school districts and divisions has had the effect of creating two local levels of action. The first, the one that holds the decision-making power, is the board of a division made up of a number of districts. The board is elected with the number of members decided by the Minister; its responsibilities are those listed above. When a district is not part of a division, its board acts as a division board.

In the past, whenever a district became incorporated into a division, an additional management monitoring body was created for that district. These bodies were the local advisory boards, elected under the same conditions as district and division boards. Although the local board’s powers were limited, they were directly related to instruction in French. The School Act (1980) defines them as follows:

- 27(1) a) to request the board of a division to institute religious instruction in the French language in accordance with this Act;
- b) to nominate a teacher;
- c) to advise the board of the division and carry out those functions that may be delegated to it by the board of the division;
- (2) If a local advisory board passes a resolution requesting that the board of a division institute instruction in the district for which the local advisory board was established and sends the resolution to the board of the division, the board of the division shall institute instruction in the French language as soon as it is practical to do so. (p. 13)

In actual fact the decision-making power remained in the hands of the division board, with the local “watchdog” board exerting nothing but influence. Local boards, a vestige of the 1937 school districts consolidation, attempted to supervise instruction of religion and French.

The 1988 School Act replaces the advisory boards by province-wide school committees, at the discretion of parents of students attending the school and the school board (section 17). However, a board may, at its discretion, delegate powers to the school committee. The Ministry of Education encourages Francophones to use advisory boards to implement their management rights under section 23. A 1984 publication, “Implementing, Monitoring and Evaluating Official and Other Language Programs”, suggests the following under the

heading "Community Involvement":

1. The School Board and schools have organized advisory and/or administrative mechanisms to obtain input from the francophone community.
2. The atmosphere in the school encourages community involvement and parental participation. (p. 9)

In other words Franco-Albertan parents are advised to work within existing structures, at a time when even the vestiges of the advisory boards have disappeared.

Following the decisions handed down by the courts in *Mahé et al.*, the Edmonton Catholic School Board drew up a proposal in 1987 for a contractual management model, which will be discussed later. We came to the conclusion⁴⁹, as did the parents and the Francophone community, that it is not a management model but a mechanism for delegating tasks without relinquishing any decision-making powers. Dubé (1988) says that the model is rejected by virtually all Francophones, who favour complete management by and for the minority. Another study demonstrates that:

only a small proportion of the Francophone population (9.3%) opposes in principle the control of the French schools by Francophones (9.3%); 24.4% are undecided... A 65.5% majority favours control. (Martel, 1988, p. 28) [trans.]

Franco-Albertans are convinced that it is essential for Francophones to manage their own schools. On the subject of the management model, a survey in the Edmonton area shows that the option of an Edmonton regional school board was selected by 82.3% of those in favour of school management by Francophones. (Martel, 1988, p. 29) The preference for establishing regional school boards was confirmed at public meetings held in 1990 by the Fédération des parents francophones and the Association canadienne-française de l'Alberta.

On the subject of instruction in French, two studies sponsored by the Alberta government demonstrate the timeliness of its development. The first study (1986) produced figures supporting "sufficient numbers" in some areas and showed that 75% of eligible parents favoured French education. The second (Blais, 1987) concluded that an elementary school in Peace River would be viable. An independent study by LTR Consulting Ltd (1988) concluded that potential enrolment in the Saint-Paul area warranted provision of minority language instruction and establishment of a homogeneous school and a Francophone school jurisdiction. A fourth study (Desjarlais, 1988) suggested a plan for implementing section 23 in Alberta.

However, a policy paper issued by the Ministry of Education in November 1988 interprets the rights conferred by section 23 in a limited fashion: it limits the rights to those areas "where numbers warrant" and delegates interpretation to majority school boards, adding

that numbers probably do warrant in five areas (Edmonton, Calgary, St-Paul, Bonnyville and Peace River). It also defines the Ministry of Education's role as providing advice on determining sufficient numbers, looking after program development, providing appropriate financial support, resolving disputes between school boards and the minority and demonstrating leadership.

Over and above all the community and political action concerning Francophone rights and interpretation of section 23 of the Charter, a number of people have taken their cases to court. The litigation between the Association Georges-et-Julia-Bugnet and parents, and the Government of Alberta in *Mahé et al.* is an attempt to gain recognition for the rights of Francophones to full, effective management within a structure parallel to that of the majority. The lower court judgment was handed down on 25 July 1985. A 1987 decision by the Court of Appeal recognizes the right of the minority to complete governance. The Supreme Court of Canada heard the appeal of the case on 14 June 1989.

C. SUMMARY

Alberta, in spite of its distinct characteristics, is fairly similar to its Prairie neighbour, Saskatchewan. Recognition of rights conferred by section 23 of the Charter has only begun, and the distinction between immersion and minority education is fairly recent (1984). Historically, authorization for instruction in French has spearheaded instruction in other minority languages. It is still difficult in Alberta to have a clear distinction made between an official language community and other ethnic communities: one reason for this is that the French minority is demographically small compared to the Ukrainian and German communities. The courts have been called upon to play an historic role in recognizing the constitutional rights to instruction of the French official language minority.

On the subject of instruction, we observed that in 1986 the equivalent of 7.5% of the enrolment eligible under paragraph 23(1)(a) of the Canadian Charter of Rights and Freedoms was being educated in programs delivering instruction to the minority: enrolment totalled 21,093 six to 17-year old children. Two homogeneous schools were providing instruction to the equivalent of 2.5% of the enrolment eligible under paragraph 23(1)(a). Progress was made between 1986-87 and 1988-89: an increase of 79.3% (417 children) in homogeneous school enrolment in grades 1-10, and an increase of 21.4% in minority program enrolment.

In light of another study's findings that members of the minority are determined to survive, there is a need to establish the exact causes of the enormous disparity between minority program enrolment and minority eligible for enrolment. According to our findings, 92% of minority respondents interviewed believe in the importance of children of Francophone parents continuing to speak French (Martel, 1988, p. 27); 88.3% of respondents would like their grandchildren to speak French, a sign of the importance they place on survival to the third generation. For this reason there is good reason to wonder why school enrolment in minority programs is so small.

School management has been the subject of litigation, primarily in *Mahé et al.*, which seeks recognition of the right to school boards. The Alberta government believes that advisory committees are sufficient to satisfy minority management requirements. A contractual management model presented by the Edmonton Catholic School Board was refused by the Francophone community.

The Francophone community in Alberta is changing. Francophones across Canada are rallying to the cause of language. Whereas the Catholic religion has enabled them to preserve their language since the first schools were established, they see the Canadian Charter of Rights and Freedoms pointing the way to a new day. In Edmonton "40.5% of Francophones say that the French schools must be Catholic, 50.3% say they must not and 9.2% have no opinion". (Martel, 1988, p. 31) [trans.]

IV. SASKATCHEWAN

A. BACKGROUND

- 1850: First French and English schools established, mainly under the auspices of the Catholic and Protestant churches.
- 1875: The Act Respecting the North-West Territories recognizes the right to establish separate (dissentient) schools.
- 1880: The North-West Territories Act guarantees religious minorities (Catholic or Protestant) the right to publicly funded separate schools.
- 1884: An order grants trustees in a separate district the same rights and duties as trustees in a public district.
- 1892: Instruction in English becomes obligatory at the primary level for the following subjects: reading, writing, spelling, arithmetic, geography, grammar, British history, Canadian history, English literature and French literature.
- 1896: The Ministry of Education authorizes (permits) instruction in French to Francophones, but limits it to one hour per day.
- 1901: Teaching of any language other than English is permitted outside regular school hours, i.e. after 3 p.m.
- 1905: Saskatchewan joins Confederation. The rights of religious minorities are entrenched in law, enabling ratepayers to establish separate districts.
- 1918: English becomes the only obligatory language of instruction, with one exception: French may be the language of instruction in grade 1 for Francophones. Instruction in the language of other minorities is disallowed.
- 1931: French is abolished as a language of instruction in grade 1. Teaching French reading, grammar and composition may be authorized by a school board up to a maximum of one hour per day.

- 1944: The Larger School Units Act merges 2,331 school districts into 29 large units. Francophones lose their relative autonomy and the *de facto* school management possible in small school districts.
- 1966: The Ministry of Education hires a person responsible for French programs.
- 1967: An amendment to the Education Act permits instruction in French up to a maximum of one hour per day.
- 1968: An amendment empowers the Lieutenant Governor to designate schools in which French may be the language of instruction for a period of time determined at his discretion.
- 1973: The Education Act is amended to permit instruction in the language of minority groups other than the Francophone group.
- 1980: The Ministry of Education sets up the Official Minority Language Office (OMLO).
- 1982: A contract signed between the Conseil de l'école canadienne-française de Saskatoon and the Board of Education of the St. Paul Roman Catholic Division #20 of Saskatoon delegates responsibilities to parent committees.
- 1984: The "Projet: Commission scolaire fransaskoise" is submitted to the Minister of Education by the Commission des écoles fransaskoises.
- 1988: Decision by the Court of Queen's Bench in *Commission des écoles fransaskoises inc. et al. v. the Government of Saskatchewan*. Francophones have the right to manage and control minority facilities when instruction is given in independent schools.
- 1988: The Supreme Court of Canada reiterates in *Mercure* that French and English are the official languages of Saskatchewan and Alberta.
- 1988: The Saskatchewan Language Act makes English the language of the courts and the Legislative Assembly. French is permitted in specific circumstances.
- 1988: The federal and Saskatchewan governments reach an agreement on promotion of official languages. The agreement covers translation of legislation, offer of language services to Francophones and implementation of Fransaskois management of school facilities.
- 1989: Following the report submitted by the Coordinating Committee for the governance of Francophone schools by Francophones, the Government of Saskatchewan undertakes the establishment of Fransaskois school boards and a provincial General Council.

B. CURRENT CONTEXT

1. Statistics

According to the 1986 census⁵⁰, 2.3% (23,720 persons) of the Saskatchewan population reported French as a mother tongue; the proportion is 0.3% lower than the 1981 figure and 0.6% lower than the 1976 figure (Table II-18). The total population of the province continued to rise (4.3% since 1981 and 9.6% since 1976).

If we add the number of respondents who reported two mother tongues (French and English) to the number who reported one mother tongue (French), the official language minority population of Saskatchewan rises to 25,900 individuals⁵¹, or 2.6% of the population of the province. This figure gives a clearer picture of the persons targeted by section 23 of the Canadian Charter of Rights and Freedoms, which does not specify one mother tongue only.

Saskatchewan is one of a group of provinces and territories which have an official language minority population classified as intermediate⁵²; the others are the Northwest Territories/ Yukon (3.0%), Alberta (2.6%) and British Columbia (1.8%). The francsaskois population is widely dispersed throughout the province. The largest concentrations of Francophones are found in the following regions: Battleford, Prud'homme-Vonda, Prince Albert, Gravelbourg-Willow Bunch, Redvers, Zenon Park and Regina (Cartwright, 1980).

Table II-18

Total French mother tongue population, Saskatchewan, 1976, 1981, 1986

Total population		FMT	FMT/ total population (in %)
1976	921 320	26 705	2.9
1981	968 310	25 535	2.6
1986	1 009 625	23 720 *	2.3
1986	1 009 625	25 900 **	2.6

* Data adjusted by Statistics Canada for purposes of comparison with previous years.

** One mother tongue (French) and two mother tongues (English and French).

Source: Statistics Canada.

As in Alberta, the Francophone presence in Saskatchewan established by coureurs de bois and French missionaries before Confederation gradually declined following waves of immigration, mainly from Europe, the United States and eastern Canada. The first wave peaked in 1913 before the First World War, and the second between 1928 and 1930 (Munroe, 1974). As a result, Francophones are now fifth in size among the province's demographic minorities and their political weight is greatly reduced. This demolingistic situation creates a climate in which recognition of the official language conflicts with recognition of other minority groups.

In 1901 the Saskatchewan Education Act placed French on the same footing as other languages and permitted it to be taught after school hours, i.e. after 3 p.m. In 1918 first grade teaching in any language other than English and French was abolished. In 1967 teaching in French was authorized, and in 1973 permission was extended to other ethnic groups. Gains by Francophones, in spite of their status as official language minority, have influenced progress by Saskatchewan ethnic groups.

In 1979 Saskatchewan adopted a system of designated schools for teaching in French and languages other than English, where applicable. As set out in Regulation 118/79, Type A designated schools were to serve the minority Francophone population, although the regulation does not specifically say so. Type B designated schools are immersion and bilingual schools. In the former, all courses are given in French, except English. In the latter, classes are given in French for between 50% and 80% of the school day. Because Type A schools are of particular interest here, their main characteristics are summarized below.

A school may be designated Type A on application by a school board and recommendation to the Lieutenant Governor in Council by the Minister of Education. A number of conditions must be met: a minimum of 15 pupils per class, a minimum of three years of operation, instruction in English or transportation to another school for pupils not enrolled in the designated program.

Type A designated schools are not necessarily homogeneous schools. The lack of an admission criterion based on section 23 of the Charter means that a school may be non-homogeneous (a smaller Anglophone enrolment mixed in with the Francophones) or two-stream (mixed or shared). In two-stream schools, official language minority programs and Anglophone programs share facilities, but are administered separately. There are four two-stream mixed schools (Gravelbourg, Ponteix, Willow Bunch and Debden). Although non-homogeneous schools serve mainly Francophone communities, some of their enrolment is Anglophone in origin (approximately 5% to 10%). The Bellegarde, Ferland, Vonda, Zenon Park and Bellevue schools are of this type.

Fransaskois pupils may be assigned to Type B schools, especially at the secondary level. A school may be designated Type A at the primary level and Type B after grade 7 (e.g. Bellegarde and Zenon Park).

According to 1986 data from the Official Minority Language Office of the Saskatchewan Ministry of Education, instruction in the language of the minority is offered in nine Type A schools (homogeneous and non-homogeneous) and four two-stream schools which deliver courses in English or immersion school premises, for a total of 12 schools and 838 pupils in grades 1-12 (Table II-19). Excluded from these figures are kindergarten programs (under six years) and one private (i.e. non-public) school, Collège Mathieu in Gravelbourg. These enrolments are the equivalent of 47.6% of the French mother tongue⁵³ school-age population (6 to 17 years) and account for the equivalent of 7.8% of the school enrolment eligible under paragraph 23(1)(a)⁵⁴, a total of 10,722 children⁵⁵.

In 1986 a single homogeneous school⁵⁶ offered instruction at the secondary level (Collège Mathieu de Gravelbourg, a private institution). Its enrolment is not included in tables II-19 and II-20, as it is not totally financed out of public funds. Private schools, which receive approximately half the funding of public schools, do not fully meet the criteria for the

rights conferred under section 23 in the matter of "out of public funds". However three Type A homogeneous French elementary schools (grades 1-9) serve a Francophone population of 166 pupils, the equivalent of 9.4% of French mother tongue school-age children (Table II-20). The three schools are Mgr de Laval in Regina, Valois in Prince Albert and the Ecole canadienne-française de Saskatoon. The most striking thing about the 1986 situation is that the population in homogeneous schools represents the equivalent of 1.6% of the school enrolment eligible under paragraph 23(1)(a).

Table II-19

Public schools providing instruction to the minority, Saskatchewan, 1986

Schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
12	838	1 762	47.6	10 722	7.8

Sources:

* Saskatchewan Ministry of Education, Official Minority Language Office, *Designated schools, Enrolments 1986-87*.

** See Table II-5.

Table II-20

Homogeneous public schools, Saskatchewan, 1986

Homogeneous schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
3	166	1 762	9.4	10 722	1.6

Sources:

* Saskatchewan Ministry of Education, Official Minority Language Office, *Designated schools, Enrolments 1986-87*.

** See Table II-5.

The figures reflect conditions which give the Saskatchewan Francophone minority little chance of developing, and indicate that effective measures must be taken to reinstate the children eligible under section 23 into the Francophone community. It is already an important step to realize that, in 1986, the equivalent of one child in five eligible under paragraph 23(1)(a) (the equivalent of 16.4%) learned French as a mother tongue from one or both parents.

Some progress has been made. Table II-21 compares enrolments for 1986-87 and 1988-89. Although enrolment in minority programs rose 18.5% (155 pupils) in two years, the homogeneous schools made much greater progress (60.2% or 100 pupils).

Table II-21

Comparison of enrolments and public schools, Saskatchewan, 1986-87, 1988-89

	1986-87	1988-89	% Increase
All public schools providing instruction	12	12	0
Enrolment (grades 1-12)	838	993	18.5
Homogeneous schools	3	3	0
Enrolment (grades 1-9 in 1988)	166	266	60.2
Two-stream mixed schools	4	4	0
Enrolment (grades 1-9 in 1988)	312	355	13.8
Non-homogeneous Francophone schools	5	5	0
Enrolment (grades 1-12)	360	372	3.3
Collège Mathieu (private)			
Enrolment (grades 8-12)	116	133	14.7

Source: Saskatchewan Ministry of Education, Official Minority Language Office. *Designated schools, Enrolments 1986-87 and 1988-89.*

For the 1989-90 school year, Statistics Canada estimates total enrolment in grades 1-12 of schools offering programs of instruction to the Francophone minority at 1,010 pupils, an increase of 1.7% over 1988 enrolment and 20.1% over the 1986 figure.

2. Description of school system

As in Alberta, the Saskatchewan Education Act provides for the establishment of separate schools for the minority in a school district, whether they be Catholic or Protestant. If minority ratepayers vote in favour of a separate school district, they are required to contribute to its funding at the rate set by the district board. Corporate taxes are allocated on the basis of shareholder religious affiliation. This means that the separate system has the same funding rights as the public system. Two school maps divide the province into public school boards and separate school boards.

Governance of both the public and separate school systems is conducted by one of five types of local or regional administration:

1. a Board of Education or board of trustees of a school division made up of small rural districts; the five to eight members are elected for three years in a local school board election;

2. a local advisory board or small district council in a district which is part of a school division; as the name suggests, its function is advisory;
3. an independent school district with three elected trustees;
4. an urban school district; and
5. a parents' council in a school replaces the local school board in districts that do not belong to a school division (in such cases there is no local advisory board).

Saskatchewan currently has 110 school divisions, including 87 public divisions which administer 770 schools, and 23 separate Catholic divisions which administer 121 schools. Each division contains a number of school districts, for a provincial total of 765.

Section 180 of the Education Act specifies that instruction in French, or in any language other than English, is the prerogative of a board of education or district school board. The Minister of Education may, pursuant to a resolution by a board, designate a school for instruction in French and classify it as Type A or Type B. The Minister of Education, with the approval of the Lieutenant Governor in Council, may make regulations:

- for the classification, organization, administration and supervision of all schools;
- for the classification of pupils and the supervision and inspection of all publicly funded schools;
- for the construction, equipment and maintenance of school buildings;
- governing the appointment, qualification and general duties of administrative personnel;
- for the approval of textbooks; and
- for program development.

An Official Minority Language Office (OMLO) was established in 1980. Its functions include:

- drafting policy;
- developing programs and recommending teaching material;
- assisting in the hiring and training of qualified teachers; and
- promoting French-language instruction in the province.

It should be borne in mind that, in addition to teaching the French-language minority, instruction in French covers immersion. According to the Official Minority Language Office, the 1986-87 enrolment totalled 7,873 pupils from kindergarten through grade 12 in 56 schools, an enrolment seven times larger than that of the official language minority. By 1988-89, the Office was reporting a total enrolment of 8,940 pupils in 61 schools.

The Francophone minority has historically been entitled to oversee its schools through parents' councils or advisory committees. The majority has the same rights. Three sections in the regulations under section 180 of the Education Act clearly state this entitlement, not only for the minority but for all Type A or B designated schools:

- 32.11(1) In the school division where no board of trustees exists, the parents and guardians of the pupils enrolled or proposed to be enrolled in a designated program shall form a parents' council.
- 32.11(2) The parents' council shall act in an advisory capacity to the board of education.
- 35(5) The parents or guardians of any pupil attending a designated school is eligible to serve on any local school advisory committee that may be formed with respect to that designated school.

Fransaskois parents have used all these advisory methods to make themselves heard.

A variation on the advisory model was used by Saskatoon parents who formed a non-profit organization and entered into a contractual agreement. In 1982 the Conseil de l'école canadienne-française de Saskatoon Inc. signed a contract with the St. Paul Roman Catholic Division #20 in the hope that the model would enable them to manage their school. Analysis of the situation leads to the conclusion that, to date, the model has not given the parents the hoped for governance⁵⁷.

Generally speaking, a school management model for Saskatchewan Francophones must consolidate the minority to provide a support network without hindering the local independence of widely dispersed groups. A Fransaskois school board project was submitted in 1984 by the Commission des écoles fransaskoises⁵⁸. The brief submitted by the Commission to the Minister of Education specifies that:

It is essential that a central structure provide services that local communities cannot afford because there are too few students. But the communities must be sufficiently independent to make the decisions that a central authority cannot satisfactorily make because of the distances involved [trans.] (pp. 28-29).

Following the decision by the Supreme Court of Canada in *Mercure*, which recognized bilingualism as historically legal in the province, and to make school management more accessible to the official language minority, the federal and provincial governments agreed in 1988 to give financial support to designing a school management structure for the official language minority. The agreement led to a process in which representatives of the following groups jointly designed a school management structure for the minority under the impartial chairmanship of the Government of Canada:

- five representatives of Fransaskois associations,
- five representatives of the provincial government,
- five representatives of school boards, and
- five representatives of education professionals.

In June 1989 the Coordinating Committee for the governance of Francophone schools by Francophones submitted a report entitled "A French Component for the Saskatchewan School System". The report recommends establishment of local Fransaskois school boards and a provincial General Council. The management model, the structure of which affects local and provincial decision-making powers and the structure of the Ministry of Education, was approved by the Minister of Education, who also supports its implementation.

C. SUMMARY

The official language minority has, as we have seen, historically had problems gaining recognition of its right to instruction in French. In 1918 and in 1931 teaching in French was prohibited. Later minority programs were largely merged with immersion programs, and official Ministry of Education recognition of the features specific to each type of program did not occur until 1979. The 1988 Saskatchewan Language Act, which made the province unilingual to all practical purposes, was a bitter pill for the minority to swallow. Under a federal-provincial agreement, a new era of minority rights recognition is dawning. The establishment of Fransaskois school boards provides a concrete method of promoting minority development.

In the matter of instruction in the language of the minority, we have seen that in the 1986 enrolment in schools delivering programs of instruction to the minority was equivalent to 7.8% of the school-age children eligible under paragraph 23(1)(a), estimated at 10,722 6 to 17-year olds. The equivalent of 1.6% of children eligible under paragraph 23(1)(a) (166 children) were being educated in homogeneous schools. The enormous disparity between eligible enrolment and enrolment in minority schools requires more in-depth research. The fact that only three homogeneous schools operate in the entire province makes it safe to assume that availability of quality services in the language of the minority does not give parents a fair choice concerning their children's instruction.

On the matter of school management, minority parents were invited to use the mechanisms established for the majority, i.e. the advisory boards. The St. Paul Roman Catholic Division #20 (1982) contractual model for school governance was designed to give parents responsibility for a homogeneous school in Saskatoon. In 1984 the Commission des écoles fransaskoises submitted a brief on a provincial school board project. The task force on Francophone school governance, working jointly with the provincial government and a number of education organizations under the chairmanship of a federal government representative, designed a minority management model. The process provides a new approach to recognizing and implementing the rights conferred by section 23 of the Charter, and has enabled a new system of Fransaskois school boards to be set up.

According to a study by Dubé (1988), most Fransaskois are very dissatisfied with the education situation. The major problem is related to school management within the Anglophone school board structure, a problem which should be solved with the establishment of the new system of management by Fransaskois school boards. However many pupils still attend immersion (Type B) or mixed schools. In addition Fransaskois schools lack both human and material resources.

The Fransaskois speak with one voice, most of them say the same thing and many of them say it eloquently. The "post-Mercure" era seems to have drawn the population closer together and strengthened a militancy which recognizes the importance and urgency of resolving the school question, and doing it now.

V. MANITOBA

A. BACKGROUND

- 1818: First French school opens in Saint-Boniface. French and English schools founded by Catholic and Protestant churches.
- 1870: Manitoba joins Confederation. The Manitoba Act guarantees the rights of religious minorities to their schools and the management thereof.
- 1871: The first Education Act establishes a board of education divided into Catholic and Protestant sections. School districts are also divided according to the two denominational systems which share the territory.
- 1881: The law permits Catholics and Protestants to share a single territory.
- 1890: With the Public Schools Act the Manitoba government eliminates the separate school system (Catholic and Protestant) and entrenches unilingualism. Francophone Catholics lose management of their independent schools, which become state property. Instruction in French and the teaching of French and religion are prohibited.
- 1896: Creation of bilingual schools is permitted if ten pupils in a school have French or any language other than English as a mother tongue. In such cases instruction is in French or another language and in English. The teaching of religion is left to the discretion of local authorities.
- 1916: The government repeals the act which permitted bilingual instruction. An open revolt is organized and teaching in French continues.
- 1952: The Public Schools Act specifies that English is the language of instruction, but that a language other than English may be used for religion or language classes before or after regular school hours.
- 1955: The French mother tongue course is authorized in grades 4-12.
- 1958: Establishment of secondary school divisions consolidates most of the Francophone population into five school divisions. Elementary school districts remain unchanged.

- 1963: The French mother tongue course is authorized for grades 1-12.
- 1967: The Public Schools Act is amended to enable, at the discretion of the Minister, instruction in French for a period not exceeding 50% of the school day. A French section is established within the Ministry of Education to draft policy, teaching requirements and draft programs in French.
- 1970: Bill 113 gives French and English equal status as languages of instruction. French may be used as the language of instruction up to a maximum of 100% of the school day from kindergarten through grade 3 and up to 75% of the school day from grade 4 through grade 12.
- 1971: A government order-in-council requires elementary school districts to join a new system of school divisions responsible for both elementary and secondary education. In some situations Francophones lose control of their schools or are obliged to share control with an Anglophone minority.
- 1974: The Bureau de l'éducation française (BEF) is founded to provide support to school boards which request it.
- 1980: When the Public Schools Act is redrafted, the province reiterates the instruction in French option, but with no guarantee that the schools will be homogeneous or managed by Francophones. Where there are 23 or more pupils at either level whose parents request that they be instructed in a class where French is the language of instruction, a school board is required to provide the necessary grouping so that instruction can be given in French.
- 1984: The Franco-Manitoban school and its specific mission are recognized in a curriculum policy paper issued by the Bureau de l'éducation française.
- 1988: Proposal for a management model, *La gestion des écoles; un modèle à suivre*, is published by the Manitoba ad hoc school management planning committee.
- 1990: The Appeal Court hands down its opinion on the interpretation of section 23 in the *Constitutional Reference*. The five judges rule that the section does not grant any right to school management. However, it is the majority opinion that the existing system cannot adequately satisfy the rights conferred.

B. CURRENT CONTEXT

1. Statistics

In 1986, 4.9% of the total population of the province (51,775 persons) reported French as a mother tongue⁵⁹ (Table II-22). The proportion was down 0.2% (785 individuals) from 1981. In the decade between 1976 and 1986 it fell 0.5% (2,970 persons); during the same decade, the total population of the province increased 4.1% (41,505 persons).

However, if we add the results for respondents who reported two mother tongues (French and English) and respondents who reported only one (French), the 1986 figure rises to 5.3% (56,585 persons)⁶⁰. These figures give a more accurate picture of the community contemplated by section 23, which does not specify that only one mother tongue may be reported.

Manitoba is one of a group of provinces (Ontario, 5.8%, Prince Edward Island, 5.1% and Nova Scotia, 4.5%) in which the official language minority is classified as significant⁶¹. The Franco-Manitoban population is concentrated in the following areas: Winnipeg, Saint-Boniface, the Red and Seine rivers, Ellice-Saint-Lazare, Lawrence-Sainte-Rose, Powerview-Saint-George and La Montagne.

Table II-22

Total French mother tongue population, Manitoba, 1976, 1981, 1986

Total population		FMT	FMT/ total population (in %)
1976	1 021 505	54 745	5.4
1981	1 026 240	52 560	5.1
1986	1 063 010	51 775 *	4.9
1986	1 063 015	56 585 **	5.3

* Data adjusted by Statistics Canada for purposes of comparison with previous years.

** One mother tongue (French) and two mother tongues (English and French).

Source: Statistics Canada.

According to subsection 79(1) of the Public Schools Act (1980), French and English are the languages of instruction in the province:

- 79(1) Subject as otherwise provided in this section, English and French, being the two languages to which reference is made in the British North America Act, 1867, are the languages of instruction in public schools.

Regulation 469/88 dated 7 November 1988 specifies the time allotment for instruction of English when English is a required subject, beginning in grade 4:

3. Time allotments for courses of study taught in either English or French shall be the same, except that, where English is a required subject, under subsection 79(6) of the Act, for those classes using French as the language of instruction, the time allotment for English shall not exceed 25% of the total instructional time.

The combined effect of the Act and the regulation is to set up two types of French mother tongue programs: the complete program which allots 75% or more of the school day to teaching in French and the partial program, in which 50% of the school day is devoted to teaching in French. Manitoba schools are further divided into two types: (1) homogeneous schools and (2) mixed schools in which Francophone classes share premises in English or

immersion schools; the latter are considered by the community to be “developing Franco-Manitoban schools”.

The statistics on instruction for the minority which refer to partial or complete programs in public mixed or homogeneous schools are given in Table II-23. The results show that 5,211 pupils receive instruction in minority programs in grades 1-12, in 34 schools and in 14 school divisions. The enrolment is equivalent to 78% of pupils who have French as a mother tongue⁶² (6,681 children). This means that the equivalent of 22% of young Manitobans do not receive instruction in their mother tongue. *The enrolment receiving instruction in French represents the equivalent of 29.4% of the 17,754 pupils⁶³ eligible under paragraph 23(1)(a)⁶⁴ of the Charter.*

Table II-23

Public schools providing instruction to the minority, Manitoba, 1986

Schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
34	5 211	6 681	78.0	17 754	29.4

Sources:

* Manitoba Ministry of Education, Bureau de l'Éducation française, *Écoles franco-manitobaines 1986-87*.

** See Table II-5.

Table II-24

Homogeneous public schools, Manitoba, 1986

Homogeneous schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
15	3 230	6 681	48.3	17 754	18.2

Sources:

* Manitoba Ministry of Education, Bureau de l'Éducation française, *Écoles franco-manitobaines 1986-87*.

** See Table II-5.

Conditions more favourable to development of the minority community are created by the homogeneous⁶⁵ Franco-Manitoban schools. Official Ministry of Education policy defines these schools as follows:

Subject to the Manitoba *Public Schools Act* and the *Canadian Charter of Rights and Freedoms*, the aim of the Franco-Manitoban school is to develop functional bilingualism in the pupils by using French as the primary language

of instruction for a minimum of 75% of the time allotment in kindergarten through grade 12, as a vehicle of French-Canadian culture and as an internal and external language of communication. [trans.]

In the 15 homogeneous Franco-Manitoban schools, 3,230 pupils receive their education in French in grades 1-12, the equivalent of 48.3% of French mother tongue children. However *this enrolment represents the equivalent of only 18.2% of the school enrolment eligible under paragraph 23(1)(a)* (Table II-24).

The progress made in two years (between 1986-87 and 1988-89) are statistically documented from Ministry of Education data. The data match previous criteria by including enrolment in grades 1-12 in schools run by school boards (Table II-25). Whereas homogeneous school enrolment fell 1.9% during the two-year period, enrolment in "total" program mixed schools rose 7.7% (57 pupils). The overall increase in enrolment in all programs was 0.6% (30 pupils).

For the 1989-90 school year, Statistics Canada estimates enrolment in grades 1-12 in schools offering programs of instruction to the Francophone minority at 5,060 pupils, a drop of 3.5% from the 1988 enrolment and 2.9% from the 1986 figures.

Table II-25

Comparison of enrolments and public schools Manitoba, 1986-87, 1988-89

	1986-87	1988-89	Increase Decrease (in %)
<i>"Total" program (75% or more of school day):</i>			
Enrolment in homogeneous schools (grades 1-12)	3 230	3 170	(-1.9)
Number of schools	15	14	Merger of two schools
Enrolment in mixed schools (grades 1-12)	736	793	7.7
Number of schools	6	6	0
<i>Partial or enriched core program:</i>			
Enrolment in schools (grades 1-12)	1 245	1 278	2.7
Number of schools	13	13	0
<i>Total :</i>			
Enrolment	5 211	5 241	0.6
Schools	34	33	0

Source: Manitoba Ministry of Education, *Écoles franco-manitobaines* 1986-87 and 1988-89.

The mixed and homogeneous schools are part of a French course and French school system supervised by the Fédération provinciale des comités de parents (FPCP) which includes 24 school committees and 34 junior kindergarten committees. There is a broad disparity in services available to the minority:

To a certain extent disparity exists in both the quality and quantity of the services delivered in Franco-Manitoban schools. Existence of the services depends on enrolment in each school or school division. No school division offers a vocational education program in French, and French special education services in some school divisions are very limited. [trans.] (Société franco-manitobaine et al., 1988, p. 19).

Furthermore, subsection 79(3) of the Public Schools Act stipulates the conditions required for establishing a class for the minority. On petition by the parents, where there are 23 or more pupils who may be grouped in a class for instruction, the school board must meet the parents' wishes. However, if the number is less than 23, the Minister may request that the school board take measures to have the minority language used as the language of instruction. The provision also protects Anglophone parents who want immersion courses or Anglophone parents who want instruction in English if the only program available is immersion.

The majority opinion of the Court of Appeal with regard to the *Constitutional Reference* was that the number is incompatible with section 23 of the Charter. Justice Twaddle found the figure too high and called for greater flexibility. A majority of the judges did not believe that local school boards were in a position to set the number warranting instruction services. The responsibility rests with the legislature or, more specifically, with an independent organization to be defined later.

2. Description of school system

When denominational rights were abolished in 1890, a single school map was drawn for Manitoba school districts and divisions. The 1988 map shows 47 school divisions and 65 districts. The province is also divided into five regional zones administered by the province and supervised by 25 Ministry of Education inspectors.

Section 5 of the Public Schools Act describes a complex mechanism for altering school divisions and school districts. The Francophone minority could make use of this geographic alteration mechanism to attain linguistically homogeneous school management. Alteration of school divisions and school districts usually proceeds by referral to a board of reference of a written request from one of the following:

- a school board, a council of a municipality;
- the resident administrator of a local government district;
- ten or more resident electors of the school division or school district;
- ten or more resident electors of an area not within any school division or school district; or
- the Minister on his own initiative.

The board of reference may request that the Minister establish a new school division or school district, add lands in any school division or school district to an existing school division or school district or transfer land altering the boundaries of the school division or school district. The board is made up of a number of members determined by the Lieutenant Governor in Council, and operates for a predetermined time period up to a maximum of two years.

School divisions and school districts are managed by school boards, or boards of trustees elected for a two-year term. The number of trustees (between 5 and 11) is determined by the Minister or by a school board when it divides its land into wards on the basis of local population density. Altering the boundaries of wards is also subject to approval by the Minister.

The Franco-Manitoban schools operate within the Anglophone school board structure. The Red River board is the only exception to this rule: it operates in French and, for all practical purposes, is a Francophone school board, more or less by chance. The fact that the elected trustees are all Francophone makes it virtually independent.

School boards have vast duties and powers, including:

- providing adequate school accommodation;
- preparing an annual report;
- preparing and publishing a budget;
- employing teachers and other personnel;
- paying salaries;
- arranging to purchase textbooks;
- determining the number, kind, grade and description, of schools to be established and maintained;
- arranging for courses of instruction at the pre-kindergarten, kindergarten, elementary and secondary levels;
- organizing evening courses, summer courses, special courses, vocational courses and technical courses;
- reaching an agreement with the provincial government or even the federal government (with approval of the Minister), the Minister, a government agency, a school board or an individual concerning pupils or the provision of pedagogical services;
- providing transportation for the pupils; and
- collecting school taxes.

Because the Manitoba school system is decentralized, the school boards work to a large extent on their own initiative.

The Minister of Education is responsible for the supervision, control and direction of all public schools and of all other schools established pursuant to the Education Administration

Act (1980, c. 31, s. 2). He is responsible for elementary, secondary and university education. The Minister may:

- provide advice to school boards on all aspects of school buildings and school premises;
- approve courses of study and textbooks;
- order a public school to be closed;
- establish and operate community colleges; and
- purchase textbooks and enter into agreements with school boards for the free distribution thereof.

He may also make regulations:

- respecting the duties of teachers and prescribing standards for them;
- prescribing the organization and government of the public schools;
- prescribing the grants that should be payable for the purposes of public schools;
- prescribing the records to be maintained by a school board; and
- generally respecting all matters having to do with education.

Since 1974 the Ministry of Education has included a Bureau de l'éducation française (BEF), with over 50 employees. Their duties are:

- to study, develop and recommend to the Minister of Education various policies and priorities dealing with all aspects of French education;
- to promote, plan, apply, administer and facilitate all aspects of French education for Francophone and Anglophone clients;
- to ensure communication and co-ordination with the other Ministry of Education divisions;
- to integrate all the basic services that are required for French education development; and
- to assist the Minister of Education in negotiating all federal assistance programs designed to promote the use of the official languages in education and to administer same. (*Annual Report 1986-1987*, p. 35).

The BEF co-ordinates the activities of all French programs including immersion and French as a second language. Although it has no power of decision, it co-ordinates Ministry services and advises the Minister.

Two events related to school management which have surfaced in Manitoba in the past few years bear witness to the strength of minority militancy. In 1988 a three-tier management model (provincial, regional and local), sponsored by six Franco-Manitoban organizations, was proposed by the School Structure Steering Committee⁶⁶. The model proposed in the document entitled "La gestion scolaire: un modèle à suivre" is the subject of consultation

and discussions with the Francophone community. It may be concluded that:

Franco-Manitobans are especially concerned about the management of their schools. Opinions on this subject are divided, with most favouring the creation of French-language school divisions (or boards), and others opposing the establishment of a single division for all of Manitoba for fear of seeing the autonomy of the local divisions weakened. (Aquin, 1988, p. 22)

A second event, the *Reference* to the Court of Appeal of constitutional matters related to section 23 of the Charter did not produce the hoped for results. One of the things the Court was asked to do was define the scope of the right to have one's children educated "in minority language educational facilities", specifying whether or not sections 23 and 15 of the Charter grant the right to management and control of the facilities. The hearings were held in the fall of 1988 and the opinions of the individual judges were rendered on 6 February 1990.

The often contradictory positions expressed by the judges make concrete application difficult. In essence the judges favour a flexible approach which, in Manitoba, means perpetuating the hesitant approach to recognizing the rights conferred by section 23.

C. SUMMARY

Historically, the French population of Manitoba was hard hit by the elimination in 1890 of the Catholic school system and by the 1916 and 1952 laws prohibiting instruction in French. Since 1967 there has been steady improvement in instruction and in services provided by the Ministry of Education.

In terms of actual instruction in 1986, 34 schools delivered instruction in minority programs to 5,211 pupils. This enrolment is the equivalent of 29.4% of the children eligible under paragraph 23(1)(a) of the Charter. The number of eligible school-age (6-17 years) children was 17,754. Homogeneous schools served the equivalent of 18.2% (3,230 pupils) of the eligible enrolment. The reasons for the disparity between school enrolment and eligible enrolment must be further documented, as must the effectiveness of the Manitoba partial instruction system (50% or less of the school day in the language of the minority).

The French-speaking official language minority is invited, for the present, to use advisory committees to exercise their right to oversee minority programs instruction. In addition, a management model paralleling the majority structure was proposed by the School Structure Steering Committee. With the support of six Franco-Manitoban organizations, the committee proposed establishing a provincial school board in addition to local and regional mechanisms. The model is under study by the parties concerned, i.e. the minority and the Ministry of Education.

VI. ONTARIO

A. BACKGROUND

- 1676: First French class begins in Kingston.
- 1791: The Constitutional Act divides Canada into Upper and Lower Canada. In Upper Canada, instruction in elementary schools is provided in English or French as required.
- 1807: The first school act provides for funding public schools established in the eight Upper Canada school districts and permits instruction to be given in French, English or German.
- 1841: The Act of Union permits the establishment of Catholic separate school boards.
- 1851: A regulation specifies exclusive use of French or English in Upper Canada schools.
- 1859: The Common School Act establishes elementary schools (grades 1-9) which are non-denominational and funded by the government and local taxation.
- 1863: The Separate School Act guarantees the right to and management of denominational elementary schools. Separate school trustees have the same duties and responsibilities as public school trustees.
- 1867: Ontario joins Confederation. The rights of separate schools are entrenched in section 93 of the Constitution Act, 1867.
- 1871: The High Schools Act promotes the creation of exclusively English public secondary schools.
- 1885: A regulation makes English a required subject in all public schools.
- 1889: A regulation under the Public School Act establishes exclusive use of English as language of instruction unless the pupil does not understand English. The exception becomes an incentive for creating bilingual schools in regions where the concentration of Francophones is high.
- 1912: The Merchant Commission recommends gradual transition from French to English as language of instruction in bilingual schools (English-French) for Francophones.
- 1913: Regulation 17 makes English the only language of instruction after grades 1 and 2. In the subsequent years, French is permitted for not more than one hour per day.
- 1927: The Merchant Commission Report recommends that Francophone pupils be instructed in their mother tongue, but specifies that they must know English by the end of grade 8. Although the Act was not amended until 1944, the situation improves for Francophones.
- 1927: The Tiny Township decision reiterates that the provincial government is not required to fund separate schools after grade 10.
- 1933: Grants based on adjusted corporate taxes are a factor in improved allocation of public funds to public and separate elementary schools (both Francophone and Anglophone) prior to grade 10.

- 1966: Instruction in French is permitted for Latin, history and geography.
- 1968: Bills 141 and 140 authorize instruction in French in all subjects and at all levels. The existence of French-language elementary schools within public and separate school boards is recognized and the creation of French-language secondary schools is authorized. French-language advisory committees (FLAC) are created to advise Anglophone public school boards on matters related to French-language teaching at the secondary level.
- 1969: The 1,358 school boards are reorganized into 192 administrative units; in a number of regions, Francophones lose the school governance which was possible under the small local board structure.
- 1972: The Conseil supérieur des écoles de langue française is established to advise the Minister on all matters related to minority instruction.
- 1974: The school boards must set up French-language Instructional Units (FLIU), i.e. classes, groups of classes or schools where numbers warrant. An advisory committee must be established for each instructional unit.
- 1976: The Mayo Commission proposes establishing a French-language Catholic School Board for the Ottawa-Carleton region. The recommendation is denied in 1979 by the Minister of Education.
- 1977: The Education Act establishes the Languages of Instruction Commission of Ontario, an advisory committee with the role of resolving disputes between minority advisory committees and school boards. An associate deputy minister of education is appointed for French-language education.
- 1979: The government, subsequent to a *Green Paper* published in February, for the first time officially proposes creation of language sections within school boards.
- 1982: The *Report of the Joint Committee on the Governance of French-language elementary and secondary schools* recommends two management models the homogeneous school board and proportional and guaranteed representation.
- 1983: The government *White Paper* proposes amendments to the Education Act to eliminate the "where numbers warrant" restriction and allow for minority language sections within majority school boards.
- 1984: The Ontario Appeal Court hands down its decision. Ontario Francophones have the right (1) to education services equal in quality to those of the Anglophone majority and (2) to attend schools which reflect minority culture. The decision upholds the right of Franco-Ontarians to manage their own schools.
- 1986: The Ottawa-Carleton French-language education governance advisory committee recommends that a French-language board be made up of two sections, one Catholic and the other public.
- 1986: Bill 75 is promulgated, providing for minority language sections within school boards and establishing proportional and guaranteed representation. It also establishes a homogeneous Francophone school board for the Toronto Metropolitan area.

- 1988: The Metropolitan Toronto French-language School Board is created on 1 December, and comes into force on 1 January 1989.
- 1988: Bill 109 establishes the Ottawa-Carleton French-language School Board.
- 1989: Bill 8 comes into force. This French Language Services Act aims to provide access to government services in French in 22 regions designated because of the size of the Francophone population.

B. CURRENT CONTEXT

1. Statistics

In 1791 when the Province of Ontario (previously Upper Canada) was created, it already had a population of 50,000 immigrants. Most were American Loyalists, the remainder being mainly from the British Isles. The proximity of Lower Canada (Quebec) and immigration from that province produced a Francophone population of between 5% and 6%. In 1986, 5.3% of the province's total population (484,265 individuals) reported French as a mother tongue⁶⁷. The ratio of French mother tongue population to total provincial population was down 0.3% from 1976 (Table II-26).

Table II-26

Total French mother tongue population, Ontario, 1976, 1981, 1986

Total population		FMT	FMT/ total population (in %)
1976	8 264 465	462 075	5.6
1981	8 625 105	475 605	5.5
1986	9 101 690	484 265*	5.3
1986	9 101 695	529 270**	5.8

* Data adjusted by Statistics Canada for purposes of comparison with previous years.

** Reports of one (French) and two (English and French) mother tongues.

Source: Statistics Canada.

However, if we add the results for respondents who reported two mother tongues (French and English) and respondents who reported one mother tongue (French), the French mother tongue population climbs to 5.8% of the provincial total (529,270 individuals)⁶⁸. These figures give a more accurate picture of the community contemplated in section 23 of the Canadian Charter of Rights and Freedoms, which confers rights on French mother tongue parents but does not specify that French must be the only mother tongue.

Ontario Francophones are demographically concentrated in Ottawa-Carleton, Prescott, Russell, Glengarry, Sudbury, Algoma, Cochrane, Nipissing, Toronto and Timiskaming. The Ontario Francophone minority is the largest French mother tongue group in Canada outside Quebec (over 500,000 individuals). The demographic weight and stability of the Franco-Ontarian minority put it in the same category as the Francophone minority of New Brunswick and the Anglophone minority in Quebec. However, in terms of percentage of total provincial population (5.8%) (Table II-26, respondents reporting one and two mother tongues), it is in the same category as Manitoba (5.3%), Prince Edward Island (5.1%) and Nova Scotia (4.5%).

Ontario legislation entitles each child to instruction in his or her mother tongue (French or English). Each school board must provide instruction or purchase instruction services from another school board. The school system which delivers official language minority instruction in Ontario is the second largest in Canada; only the Quebec Anglophones have a larger enrolment.

In 1986, 77,142 pupils received instruction in French in official language minority programs (grades one through twelve) in school board run schools. In order to standardize the data and enable pan-Canadian comparison of school-age children (6-17 years of age)⁶⁹, only enrolment in grades 1-12 is considered; enrolment in kindergarten, junior kindergarten and grade 13 is excluded (Table II-27). Total enrolment in programs delivering instruction to the minority is larger than the number of French mother tongue school-age children (6-17 years)⁷⁰. The number of these children was calculated to be 70,462⁷¹.

The high enrolment in programs of instruction for the minority suggests two things. The 351 homogeneous or mixed Franco-Ontarian schools (the schools which deliver instruction to the minority) could in theory be a recovery mechanism for children who, because they did not learn French as a mother tongue from one or both parents, would have been assimilated. If the number of children enrolled is larger than the number of French mother tongue children, it may be assumed that children who did not learn French at home can learn it at school, under the provisions of section 23. However, we know that these schools and these programs do not serve French-language minority children exclusively. In some schools and programs, many Anglophone majority children learn French in programs designed for the minority. This swells minority school enrolment figures, without the services actually benefiting the Francophone minority.

Table II-27

Public schools providing instruction to the minority, Ontario, 1986

Schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
351	77 412	70 462	109.9	135 612	57.1

Sources:

* Ontario Ministry of Education. *Ontario Education Statistics*, 1986.

** See Table II-5.

Table II-28

Homogeneous public schools, Ontario, 1986

Homogeneous schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
313	72 555	70 462	103.0	135 612	53.5

Sources:

* Ontario Ministry of Education. *Ontario Education Statistics*, 1986.

** See Table II-5.

A total of 135,612 school-age children (6 to 17 years) were eligible under paragraph 23(1)(a) of the Charter (Table II-27). *Enrolment in schools delivering instruction to the minority accounts for only 57.1% of the total number of eligible children.* This figure is actually too high, since the children enrolled are not all eligible under section 23.

The situation in homogeneous⁷² schools is shown in Table II-28. In 1986-87, the 313 homogeneous schools offered instruction to 72,555 pupils in grades one through twelve. This enrolment was the equivalent of 103.0% of the school-age French mother tongue population. Furthermore it is the equivalent of 53.5% of the enrolment eligible under paragraph 23(1)(a).

The Francophone minority enrolment was divided between Catholic and public school boards. To shed some light on the evolution of the two types of boards, Table II-29 gives enrolment figures for the school years 1986-87 and 1988-89. Because it was during this time period that the Catholic secondary school system became completely publicly funded, its enrolment skyrocketed 243.4% in homogeneous schools (5,691 pupils) and shot up 43.0% in mixed schools (74 pupils).

The figures also show a total increase of 12 schools delivering instruction to the minority between 1986-87 and 1988-89 and a net increase of 18 homogeneous schools in two years.

Overall enrolment rose 1.7% (1,342 pupils). Enrolment in homogeneous elementary public schools rose 20.1% (744 pupils) and the overall increase for homogeneous schools was 5.0%.

For the 1989-90 school year, Statistics Canada estimates enrolment in grades 1-12 in schools offering programs of instruction to the Francophone minority at 78,120 pupils, a drop of 0.1% from both 1988 and 1986 figures.

Table II-29

Comparison of enrolments and public schools, Ontario, 1986-87, 1988-89

	1986-1987		1988-1989		% Increase	
	Schools	Pupils	Schools	Pupils	Schools	Enrolment
Elementary schools, grades 1-8						
• Public homogeneous	18	3 988	24	4 732	33.3	20.1
• Public mixed	1	78	3	144	200.0	84.6
• Catholic homogeneous	251	50 206	258	50 646	2.8	0.9
• Catholic mixed	6	519	2	177	(-66.6)	(-65.8)
Secondary schools, grades 9-12						
• Public homogeneous	33	16 023	27	12 775	(-18.2)	(-20.3)
• Public mixed	27	4 088	20	2 005	(-25.9)	(-50.9)
• Catholic homogeneous	11	2 338	22	8 029	100.0	243.4
• Catholic mixed	4	172	7	246	75.0	43.0
• Total: Homogeneous schools	313	72 555	331	76 182	5.6	5.0
Total : All schools	351	77 412	363	78 754	3.4	1.7

Source: Ontario Ministry of Education. *Ontario Education Statistics*, 1986 and 1988.

A final note: of the 500 private schools in Ontario, four are French. They are not funded by the Ministry of Education, and all are located in the Ottawa area.

2. Description of school system

The Ontario school system is decentralized. The Ministry of Education is divided into divisions which handle: (1) administration, (2) planning and policy, (3) programs of instruction and (4) education services. Under the provisions of the Ministry of Education Act, the Minister, subject to approval by the Lieutenant Governor in Council, is empowered to make regulations:

- respecting school organization, establishment and administration;
- on the allocation and distribution of grants;

- on establishing and administering teacher training schools;
- respecting agreements with other ministries;
- concerning libraries; and
- respecting accreditation of private schools.

He is also empowered to:

- prescribe required and optional programs of study and primary, middle, intermediate and senior levels;
- establish procedures for approving teaching material;
- purchase and distribute textbooks; and
- order the closure of a class or school for an specific period of time.

The needs of Francophones are handled at the provincial level within the four divisions referred to above. An assistant deputy minister of Franco-Ontarian education, whose staff of 12 includes six education officers, advises the Minister. Six regional offices employ some 60 educators who provide direct consultation with school boards on setting up and implementing the French-language program. In other words the Ministry of Education does not handle Francophone minority education matters through a structure parallel to majority education.

At the regional level, schools are managed by a system of school boards whose boundaries are drawn on a double boundary (one public, the other separate and largely Catholic) school map. The school boards are classified by size of area administered:

- 77 boards of education which handle school divisions: public, responsible for elementary or secondary schools;
- 49 integrated Catholic separate school boards: administer school zones dispersed throughout a county or district;
- 25 public school district boards;
- 11 separate school boards: 10 Catholic and one Protestant;
- one secondary school board; and
- 19 other school boards: 11 National Defence boards and eight hospital and treatment centre boards.

The members of a school board are elected using a formula based on the population of the area administered by the board. Board members, who must be residents at least 18 years of age, are elected for a three-year term.

In 1986 the structure of the 182 school boards in the province was complicated by the establishment of French-language education councils (FLEC) and English-language education councils (ELEC), set up to govern minority language sections. The powers of school boards are described on the basis of these councils. When a board of education has

no French- or English-language section, it performs all the tasks and has all the powers of a minority section and a full board (minority language section and majority language group).

Bill 75 establishes the method of governance for minority language sections (French or English) wherever a school board (1) operates minority classes or schools or (2) purchases services for a minority comprising more than 300 pupils or 10% of the student population. The system provides representation within existing structures without changing the current school map of Ontario. It is a middle-of-the-road method which attempts to respond to Franco-Ontarian governance needs with a minimum of geographical redistribution.

The number of trustees who govern a minority language section is calculated using a formula which is both proportional and guaranteed:

- the ratio of the number of education council members to the total number of board members is the same as the ratio of resident registered pupils to total number of pupils; and
- a minimum of three members is guaranteed.

The board of education keeps its traditional number of members for the region, unless the number of minority trustees, calculated on the basis of representation, is less than three. If it is, the total number of trustees is increased by the difference. The minority trustees are subject to the same eligibility rules as majority trustees; in addition they must have the rights conferred by subsections (1) and (2) of section 23 and opt to vote solely for members of the minority section.

Bill 75 distinguishes between the areas of jurisdiction restricted exclusively to members of a French-language education council (FLEC) or English-language education council (ELEC), who are responsible for minority education governance through:

- the planning and establishment of French-language instructional units, including the preparation and submission of capital expenditure forecasts;
- the administration and the closing of French-language instructional units;
- admission committees;
- the planning, establishment, implementation and maintenance of programs and courses for pupils enrolled in a French-language instructional unit;
- the recruitment and assignment of teachers and administrative and supervisory personnel for French-language instructional units; and
- entering into agreements with other school boards. (p. 14)

All areas other than those which are not the exclusive jurisdiction of a minority section are decided jointly by the minority and the majority. The Act specifies the following questions as subject to joint decisions taken on centralized services:

- salaries, benefits and professional development of employees but excluding employees governed by the minority section;

- the maintenance and operation of services and equipment required for school buildings;
- school supplies other than instructional and learning materials;
- transportation;
- reserve funds and working funds;
- head offices including services operated therefrom; and
- permanent improvements other than the replacement for schools and classes of furniture, furnishings, library books and instructional equipment and apparatus. (p. 15)

Since Bill 75 came into force on 1 October 1986, 56 school boards (30 Roman Catholic separate school boards and 26 public boards) have established FLECs and 11 school boards in majority Francophone areas have established ELECs (nine in Roman Catholic separate boards and two in public boards).

In two instances, French-language education is governed by a French-language school board rather than a FLEC. In 1986, Bill 75 amended the Municipality of Metropolitan Toronto Act and established a Metropolitan Toronto French-language School Board. The legislation came into force on 1 January 1989 and the Board is part of a federation of seven area education boards in the Metropolitan Toronto area which is governed by a single, two-level structure. The French-language Board has the same powers and obligations as the other school boards.

The Ottawa-Carleton board, established by Bill 109 and the second French-language school board to be established, is based on the FLEC model of proportional and guaranteed representation; the board applies the model to the denominational system in an effort to meet the denominational rights entrenched by section 93 of the Constitution Act, 1867. The board has two sections, one Catholic and one public. The public section is governed by eight members elected from among Francophone ratepayers, and the Catholic section is governed by 14 trustees. The Catholic and public sections have more powers than the French-language and English-language sections in other boards: for all practical purposes, they operate like regular school boards.

Bill 75 provides for a local advisory committee to assist the Board with regard to purchasing services from another board in response to needs of one or more resident children. An advisory committee must be established if at least 10 ratepayers request it.

To summarize, Francophone education is governed by:

- two regional school boards (Ottawa-Carleton and Toronto);
- 11 school boards in which Francophones are in the majority (nine Roman Catholic separate and two public);
- 56 French-language sections within Anglophone school boards (30 Roman Catholic separate and 26 public); and
- local advisory committees.

The Francophone population of Ontario has established a broad variety of organizations:

- l'Association canadienne-française de l'Ontario;
- l'Association française des Conseils scolaires de l'Ontario;
- l'Association des enseignants franco-ontariens;
- l'Association des surintendantes et des surintendants franco-ontariens;
- the Federation of Associations of French-Speaking Parents and Teachers of Ontario;
- la Fédération des élèves du secondaire franco-ontarien; and
- le Centre franco-ontarien de ressources pédagogiques.

This network of organizations creates a Francophone infrastructure that is very useful for supporting education claims. The Council for Franco-Ontarian Education has drawn up a master plan for the five main areas of Franco-Ontarian education. Its main recommendations are as follows:

- *the school*: defining teaching methods for French, taking a firm hold on school governance and homogeneity, and opening the school to the community;
- *preschool and day care*: achieving recognition of the need for the government to provide such service, promoting the creation of French-language day care centres, drafting and disseminating preschool teaching material;
- *elementary and secondary*: within the Ministry of Education, creating a French-language program branch, reviewing the teacher training program with the Minister, upgrading professional development services and drafting governance measures;
- *college*: promoting self-governance by Francophones, establishing one French-language college each in eastern, northern and southern Ontario, and working toward creation within the Ministry of a French-language college directorate; and
- *university*: working to have the government give priority to creating a university system of French-language programs and services, establishing French-language university services and programs in each region, and creating a provincial fund to be used by Francophone researchers.

This comprehensive program would provide a broad range of complementary services by and for Franco-Ontarians, and provide a structure for their claims in the years to come.

C. SUMMARY

The background section on French-language education in Ontario clearly shows that the official language minority has long claimed legislative measures to guarantee the survival of its language and culture. Although progress has been slow, claims and protests have produced positive results. Over the years the subject of Francophone claims has evolved from education services delivering instruction to governance models, especially since the 1974 establishment of French-language instructional units and advisory committees to monitor them. The instructional units have now become sections which provide proportional and guaranteed representation.

Our survey of minority language instruction shows that, in 1986, the equivalent of 57.1% of school-age children (6-17 years) eligible under paragraph 23(1)(a) were being educated in programs of instruction for the minority. Total enrolment in grades 1-12 (77,412 children) represents the equivalent of 109.9% of all French mother tongue children from 6 to 17 years of age (70,462). This means that the Ontario system serves a large proportion of the mother tongue population. A subsequent study should examine the proportions in which the services provided to the French-language minority actually serve the children of the minority rather than children of the Anglophone majority. Further study should also be done to determine what proportion of Ontario children eligible under paragraph 23(1)(a) (i.e. the eligible enrolment) could in fact benefit from French-language instruction services.

The progress observed between the 1986-87 and 1988-89 school years are approximately 1.7% (1,342 pupils) for the enrolment in minority programs (grades 1-12). Homogeneous Catholic schools have shown the most dramatic growth during the period (243.4%), mainly because of the long overdue public funding to this type of school.

Representational school governance models had their origin in Ontario. The proportional and guaranteed representation introduced by Bill 75 is in force in 56 school boards in the province. However, complete governance by the school board system requires reorganization of school boundaries. The model was recently adopted for the Toronto and Ottawa metropolitan areas by the creation of homogeneous Francophone school boards. It is this model that the minority associations in other areas with large Francophone populations are now demanding.

VII. QUEBEC

A. BACKGROUND

1608: Shortly after the founding of Quebec City, the first French-language schools established were missions for the conversion of natives and instruction of the original inhabitants' children.

- 1635: Founding in Montreal of the Jesuit College, which later became the Université de Montréal.
- 1759: Quebec becomes an English colony.
- 1824: The Fabrique Act recognizes the principle of local authority. Each parish is authorized to allocate one quarter of its budget to establishing and maintaining schools.
- 1841: Following the Durham report, the Education Act recognizes a public school system providing two religious programs (Catholic and Protestant).
- 1852: Laval, McGill and Bishop's universities obtain their charters.
- 1857: Three normal schools (two Catholic and one Protestant) are established for teacher training.
- 1861: The School Act establishes two systems in Lower Canada: one for Quebec City and Montreal, and one rural. The rural system provides the right to religious dissidence.
- 1867: Lower Canada becomes a Canadian province. Denominational rights are entrenched.
- 1869: The first Public Instruction Act makes a clearer distinction between the Catholic and Protestant sectors, and gives them greater independence by creating two provincial denominational committees.
- 1875: The Ministry of Public Instruction is abolished. The Council of Public Instruction becomes the central authority for education matters. The Catholic and Protestant committees of the council are made responsible for instruction.
- 1896: Founding of Loyola College, a private school for English-language Catholics.
- 1903: The Legislative Assembly adopts an act providing that, for educational purposes, Jews are to be regarded as Protestants.
- 1928: A semi-autonomous committee to manage the affairs of Anglophone Catholics is established within the Montreal Catholic School Commission.
- 1928: The 1903 Act is declared *ultra vires* by the Privy Council in London. Although only Catholics and Protestants enjoy constitutional guarantees, the government later grants additional funds for instructing Jewish students within the Protestant school boards.
- 1931: Founding of D'Arcy McGee, first English Catholic public high school.
- 1943: First compulsory school attendance act.
- 1963: The Parent report recommends reorganization of the school system: dedenominationalizing structures, creating unified and integrated school boards (with no distinction as to language or religion) and creating school committees.
- 1964: The Ministry of Education is established. Tax revenues are distributed among the school boards.
- 1964: Operation 55 is launched; the aim is to create 55 regional school boards for Catholics and nine regional school boards for Protestants.
- 1965: Regulation 1 approved by the government establishes the basic structures of elementary and secondary education.

- 1969: Bill 63 makes French the working language of Quebec and guarantees in law the right of parents to choose the language of instruction for their children.
- 1969: Bill 62 proposes unified school boards. The Bill died in committee as the Union nationale lost the provincial election.
- 1969: Bill 27 reduces the number of school boards outside the Island of Montreal from 1,100 to 250, and classifies them along denominational lines. It also creates school committees, thus recognizing the importance of parents in the governance of school matters.
- 1972: Bill 71 reduces the number of school boards on the Island of Montreal from 33 to 8: six Catholic and two Protestant.
- 1974: Following the recommendations made by the Gendron Commission, Bill 22 makes French the official language of Quebec. Enrolment in English schools is restricted to children with a sufficient knowledge of English.
- 1977: The Charter of the French Language (Bill 101) restricts enrolment in English schools to children whose parents received the greater part of their primary instruction in English or whose brother or sister received instruction in English.
- 1982: The White Paper proposes greater autonomy for parent committees, establishing language-based school boards and making schools legally constituted corporations.
- 1984: Bill 3 reorganizes Quebec into Anglophone and Francophone school boards.
- 1984: The Supreme Court of Canada decides that a section of Bill 101 is unconstitutional: it does not allow Anglophone Canadians to have their children instructed in English because it limits access to English schools to children whose parents received their primary instruction in English in Quebec.
- 1985: Bill 3 is deemed unconstitutional by the Quebec Superior Court because it contravenes section 93 of the Constitution Act, 1867.
- 1988: Bill 107 is adopted after second reading by the National Assembly. It reiterates the division of Quebec into Anglophone and Francophone school boards, but protects the denominational boards which existed in 1867. The Act is to be promulgated, by decree of the National Assembly, after its constitutionality is tested in a reference to the Superior Court.
- 1988: Following the decision by the Supreme Court of Canada, Bill 178 is adopted, giving precedence to the French language on all signs.

B. CURRENT CONTEXT

1. Statistics

The Province of Quebec occupies 33% of the Canadian land mass. From its origin as a French colony, it later became a British colony. Following the conquest, and arrival in Quebec of the first immigrants from England and New England, the demand for schools was soon felt. This was the beginning of a denominational system, which was entrenched in the Constitution Act, 1867, and is still at the heart of social and legal questions.

The Quebec Anglophone population has changed radically in the past two decades. In 1986 the total Anglophone population of Quebec was 678,785⁷³, or 10.4% of the province's total population, a drop of 0.6% from the 1981 figure and 2.4% since 1976. The Anglophone exodus in the late 1970s is an important factor in the loss of 121,895 English mother tongue Quebec residents in a single decade.

Unlike the Francophone minorities in Canada, the English mother tongue minority in Quebec is smaller than the population who speak English at home. According to Statistics Canada (1986), 12.3% of the Quebec population spoke mainly English at home (adjusted data), a total of 796,695 persons, i.e. 117,910 more than the total number of English mother tongue residents.

Furthermore, if we add the results for respondents who reported two mother tongues (French and English) and respondents who reported one mother tongue (English), the population who could claim English as a mother tongue (not necessarily the only one) climbs to 730,760 persons⁷⁴ (Table II-30) or 11.2% of the province's total population. The English-language minority population is mainly concentrated in the Montreal metropolitan area, the Eastern Townships, the Outaouais, Quebec City, Gaspé and Abitibi-Témiscamingue.

Table II-30
Total English mother tongue population, Quebec, 1976, 1981, 1986

Total population		EMT*	EMT/ total population (in %)
1976	6 234 445	800 680	12.8
1981	6 438 400	706 115	11.0
1986	6 532 460	678 785**	10.4
1986	6 532 450	730 760***	11.2

* EMT: English mother tongue
 ** Data adjusted by Statistics Canada for purposes of comparison with previous years.
 *** Includes reports of one mother tongue (English) and two mother tongues (English and French).
 Source: Statistics Canada.

Although the Charter of the French Language makes French the language of instruction in Quebec, section 79 stipulates:

However, every school body shall, where necessary, avail itself of section 213 of the Education Act to arrange for the instruction in English of any child declared eligible therefor.

The above-mentioned eligibility has been the subject of considerable discussion, and the criteria have been modified over the years. In 1969, Bill 63 made application for English-language instruction the criterion for eligibility: every parent was given the option of having his or her child instructed in the English language. In 1974 the eligibility criterion was changed to the child's knowledge of the minority language. However, in the mid-seventies, the logistics involved in checking the knowledge of English proved extremely difficult, and the criterion was abandoned (Paillé, 1990). In 1977 the Charter of the French Language specified that, for a child to be admitted to an English school, his or her father, mother, brother or sister must have received or be receiving English-language primary education in Quebec, criteria which are objectively verifiable. These criteria also influenced the wording of section 23: they may be found in paragraph (1)(b) and subsection (2)⁷⁵.

Today elementary instruction in Canada in English of a parent and instruction in English of a brother or sister are the main criteria in force. When there is litigation, questions related to this right to instruction are submitted to an appeal commission and to the Minister of Education. Between 1 April 1986 and 30 March 1987, files on 21 children were submitted to the Minister who, in every case, authorized the child's enrolment for instruction in English. The following year (1987-88), the Minister studied files on 31 children. Again enrolment for instruction in English was authorized in every case. The annual reports for the relevant years give the following reasons:

- absence of French school providing religious instruction compatible with the traditions and beliefs of the parents;
- all prior instruction in English;
- problems with integration into the Francophone school milieu; and
- extremely difficult family situation.

The paragraph 23(1)(a) (Canadian Charter of Rights and Freedoms) criterion for eligibility to instruction in the minority language, "the first language learned and still understood" by the parent, does not apply in Quebec. Section 59 of the Charter stipulates:

59. (1) Paragraph 23(1)(a) shall come into force in respect of Quebec on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.
- (2) A proclamation under subsection (1) shall be issued only where authorized by the legislative assembly or government of Quebec.
- (3) This section may be repealed on the day paragraph 23(1)(a) comes into force in respect of Quebec and this Act amended and renumbered, consequentially upon the repeal of this section, by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

In Quebec the criteria for enrolment in minority language instruction comply with paragraph (1)(b) and subsection (2) of section 23 of the Charter.

Because the purpose of this chapter is to evaluate, without considering provincial variations, the potential demand for minority education services which would result from integral application of paragraph 23(1)(a), data specifically related to the paragraph are included.

In accordance with the cautious methodological approach adopted for our study, the figures reflect enrolment in schools providing English-language instruction and governed by Catholic or Protestant school boards. A reminder: section 23 stipulates that the instruction must be provided to the minority "out of public funds". For the time being, enrolments in all private schools are excluded⁷⁶.

The data are next standardized for purposes of comparison with data on other Canadian provinces which have a combined primary and secondary total of 12 years⁷⁷. The total in Quebec is 11 years. To obtain the 12 school years which usually parallel the age group represented by children 6 to 17 years of age, Quebec school enrolment figures include kindergarten⁷⁸.

In 1986, enrolment in school board schools delivering instruction in English totalled 111,178 pupils for the 1986-87 school year (Ministry of Education). According to the 1986 Census, the English mother tongue school-age population (6-17 years)⁷⁹ totalled 86,946 children. Minority language school board enrolment represents more than 100% (127.9%) of the English mother tongue school-age population. It must be remembered that instruction delivered by school boards covers only part of the enrolment educated in English⁸⁰. Furthermore, 8,723 Francophones (7.9%) and 26,251 Allophones (23.4%) lawfully received instruction in English in 1986-1987 (Ministry of Education). Ministry figures also show that 12,781 English mother tongue pupils were being educated in French (*Enrolment 1986-87*, p. 27). Some of these pupils were being educated in French by choice, others were not eligible for instruction delivered to the minority. The enrolment eligible under paragraph 23(1)(a) totalled 121,513 children⁸¹, or the equivalent of 91.5% of enrolment in school board schools which delivered instruction in English (Table II-31).

Enrolment in English-language programs of instruction comply with the provisions of paragraph 23(1)(b) and subsection 23(2) of the Canadian Charter of Rights and Freedoms (which are applied *de facto* in Quebec). It is evident that the criteria generate a total enrolment very close to the enrolment that would be eligible if paragraph 23(1)(a) (mother tongue of a parent) were applied.

The denominational nature of Quebec education is at the heart of contemporary questions concerning official language minority education. We will now describe the state of education on the basis of language in denominational school boards. Our data are taken from the Quebec Ministry of Education's *Enrolment 1986-87* figures for the 1986-87 school year. In Catholic school boards, 95.5% of the pupils were instructed in French (904,765 pupils

out of a total enrolment of 947,938). 43,173 pupils or 4.5% of enrolment in the Catholic school boards were instructed in English. In the Protestant school boards, 80% of the pupils (65,375) were instructed in English and 20% (16,247) were instructed in French. Some 2,630 pupils instructed in English attended schools run by one of the three multi-denominational school boards.

These figures suggest two things. Firstly, the Francophone population is polarized within the Catholic school boards. The Protestant school boards are less homogeneous, as one child in five is instructed in French. On the other hand, a large proportion of pupils instructed in English (38.8%) attend schools run by Catholic school boards, where they are in the company of a very strong Francophone majority.

Table II-31

Public schools and publicly funded private schools providing instruction to the minority, Quebec, 1986

Schools*	Enrolment (K. to Secondary V)**	Minority population (6-17 years)***	Enrolment EMT (in %)**	Eligible enrolment***	Enrolment EC (in %)**
374	111 178	86 946	127.9	121 513	91.5
		86 946		121 513	
424	119 790	86 946	137.8	121 513	98.6

Sources:

* Quebec Ministry of Education. 1988. *Statistiques de l'éducation*. p. 10. Public schools only.

** Quebec Ministry of Education. *Effectifs scolaires 1986-87*. Table 14.

*** See Table II-5. Paragraph 23(1)(a) is not currently applied in Quebec; the school enrolment eligible under section 23 is based on paragraph 23(1)(b), primary instruction in English received by a parent, and subsection 23(2), primary or secondary instruction received by a brother or sister.

Table II-32

Homogeneous public schools and homogeneous publicly funded private schools providing instruction to the minority, Quebec, 1986

Homogeneous schools*	Enrolment (K. to Secondary V)**	Minority population (6-17 years)***	Enrolment EMT (in %)**	Eligible enrolment***	Enrolment EC (in %)**
308	99 190	86 946	114.1	121 513	81.6
		86 946		121 513	
336	105 635	86 946	121.5	121 513	86.9

Sources:

* Quebec Ministry of Education. 1988. *Statistiques de l'éducation*. p. 10. School board schools only.

** Quebec Ministry of Education. *Effectifs scolaires 1986-87*. Table 14.

*** See Table II-5.

The extent of Anglophone minority attendance of private schools funded by the Ministry of Education sheds further light on the state of minority education. The following is a summary for the school year 1986-87; the data are from the Ministry of Education publication *Enrolment 1986-87*.

The first thing that must be understood is that the system of publicly funded private schools for the English-language minority is unique in Canada. These schools receive grants of up to 80% of those received by the public schools⁸². For a pupil to be enrolled in one of these schools, he or she must be eligible according to the same criteria in force for school board public schools. This means that the private schools are relatively accessible to the English-language minority.

In 1986 enrolment in private schools (97,183 pupils) was 8.6% of total provincial enrolment (1,137,252). In the school board system, 10.7% of pupils received instruction in English whereas, in private schools, 8.9% (8,612 pupils) of the pupils in the system were being educated in English. These data show that the English-language minority demonstrates greater preference for the public school board system.

Furthermore the above-mentioned sources indicate that 75.9% (6,537 pupils) of the enrolment in English-language publicly funded private schools had English as a mother tongue; 7.4% (634 pupils) had French as a mother tongue and 17.3% had neither French nor English. In the school board system, as we have seen, 68.5% of pupils who received instruction in English had English as a mother tongue. In other words the private school system had a larger proportion of English mother tongue pupils than the public system.

If the enrolment in publicly funded private schools providing instruction to the English language minority (50 schools) is added to the enrolment in Table II-31, the resultant total is 119,790 pupils, or the equivalent of 137.8% of English mother tongue children and 98.6% of children eligible under paragraph 23(1)(a).

Let us now turn to English-language homogeneous⁸³ schools. In the 1986-87 school year, 308 of the 374 school board schools delivering instruction to the English official language minority were homogeneous (Table II-32). According to the Ministry of Education's *Enrolment 1986-87* (p. 45), school board homogeneous schools had a total enrolment of 99,100 pupils from kindergarten through Secondary V. *This enrolment is the equivalent of 114.1% of the 6 to 17-year English mother tongue population.* The enrolment in school board homogeneous schools providing instruction to the minority is the equivalent of 81.6% of the school-age population eligible under paragraph 23(1)(a). Table II-32 clearly shows this.

The next step is to add the enrolment in the 28 publicly funded, English-language homogeneous private schools (6,445 pupils) to the English minority enrolment in school boards. *The total enrolment (105,635 pupils) is the equivalent of 121.5% of the 6 to 17-year old English mother tongue population and the equivalent of 86.9% of the school-age children eligible under paragraph 23(1)(a).*

The English minority language instruction situation between 1986-87 and 1988-89 shows a downward trend in minority enrolment; overall Quebec enrolment, which had previously been dropping, was relatively stable (-0.2%). The combined figures for school boards and private schools show that minority enrolment was down 5.4%. The number of schools fell by 5.0% (21 schools). Table II-33 illustrates the situation. Enrolment in homogeneous schools in both sectors follow the same trend, i.e. a loss of 4,960 pupils (4.5%).

Statistics Canada estimates that the downward trend will continue in the school board schools (1989-90 enrolment forecast at 103,000 pupils, a further drop of 2.0% in one year).

Table II-33

Comparison of enrolments and public schools and publicly funded private schools Quebec, 1986-87, 1988-89

	1986-87	1988-89	Increase Decrease (in %)
Enrolment in programs of instruction [School boards, K*-Secondary V]	111 178	105 141	(-5.4)
Number of schools (School boards)	374	360	(-3.7)
Publicly funded private sector	8 612	8 144	(-5.4 %)
Number of schools	50	43	(-14.0 %)
Enrolment in homogeneous schools [School boards, K-Secondary V] School board sector	99 190	94 830	(-4.4)
Number of schools	308	298	(-3.2)
Publicly funded private sector	6 445	6 145	(-4.7 %)
Number of schools	28	25	(-10.7 %)
Total: English minority	119 790	113 285	(-5.4 %)
Provincial enrolment	1 137 252	1 135 584	(-0.2)

* K: Kindergarten

Source: Quebec Ministry of Education. *Effectifs scolaires 1986-87 and 1988-89*.

To clarify the education situation of the Quebec Anglophone minority, we will report some of the fears that have been expressed. It should be pointed out that the Quebec Ministry of Education also refers to the alarming drop in enrolment in the publication *Statistiques de l'Éducation*:

Between 1977 and 1987, in preschool and primary education, a 5.2% drop in enrolment led to the closure of 5.5% of public primary schools. In secondary education, the loss of a little more than one third of the pupils led to the closure of approximately 20% of public secondary schools. During the same decade, the number of public English schools fell 28.3%, as the result of plunging enrolments (47.4%). [trans.] (1988, p.8)

In the past fifteen years, the minority has witnessed an erosion of education services. Alliance Quebec describes three main difficulties. Firstly, the falling enrolment in English schools referred to above means that many of the remaining schools are small schools, "Outside the major urban areas, schools may have as few as 20-30 students and rarely more than 100-150. Even on the Island of Montreal, small English language schools are becoming more common." (1988, p. 4). A loss of important services follows (e.g. nurses, social workers, psychologists, guidance counsellors and speech therapists).

A second factor is the dispersal of enrolment among a number of systems. The increase in the number of pupils enrolled in French-language schools of the Protestant system and the division of enrolment between two denominational systems (Protestant and Catholic) contribute to heterogeneity and greater division within the system serving the English-language minority.

Thirdly, Alliance Quebec fears the trend toward steadily increasing control of school management by the Ministry of Education.

Within a framework of agreed-to provincial minimum standards, we must nonetheless resist any tendency to move progressively towards over-centralization and standardization of education in Quebec in the areas of pedagogy, administration and even fiscal management. Our ability as a society to foster the potential of both French-speaking and English-speaking young people relies on the respect and encouragement we accord our distinct community identity. (1988, p. 7)

The feeling among the Quebec Anglophone minority is one of anxiety. Our data show that concerns about loss of homogeneity and dropping enrolments are fully justified.

2. Description of school system

Historically the Quebec school system has been organized along denominational lines. In 1988 a double boundary school map divided the province into 181 Catholic boards, 29 Protestant boards and three integrated or multi-denominational boards. The Anglophone minority managed its school facilities through the denominational system. However, as we have seen, the past 15 years have brought changes, and the Protestant sector is no longer a homogeneous, English-language school system. In fact the "Protestant" schools operate as neutral or non-denominational schools. We have also seen that 38.8% of the pupils in

English-language programs delivered by Catholic school boards account for 4.5% of the total population.

The Quebec school system is centralized as the result of changes which, in the past twenty years, have been designed to remove control from local authority, historically held by the churches. Early in 1988 the Ministry modified its administrative structure to bring middle management closer to the administrative centre and broaden the scope of interaction with the schools.

The Ministry employs 1,237 persons. The deputy ministers are assigned to Catholic or Protestant instruction. The services provided are (1) pedagogical planning and development, (2) systems, (3) administration and (4) labour relations. Structures have gradually been built up along language lines. A separate branch, with some fifteen employees, handles educational services for Anglophones. Its mandate is:

to ensure that Ministry guidelines on education services and their implementation meet the needs of the Anglophone schools. It is responsible for establishing and implementing mechanisms for interaction with various Ministry units and Anglophone schools. It takes part in preparing, adapting and enforcing Ministry guidelines for education services to Anglophone schools. [trans.] (*Rapport*, p. 43)

The Minister has vast powers. His duties include:

- pedagogy: to define and organize instruction for the entire population, approve programs and teaching material, and award certificates and diplomas;
- human resources: to define conditions of work, establish a system for teacher classification, training policy and professional development policy, and negotiate collective agreements;
- material and financial resources: to establish budgetary rules for allocation of funds, management and accounting, authorize loans and construction projects; and
- information: to collect and manage the data required for the education system and disseminate data to be used in decision-making.

The Act gives the school board the role of provider of education services supervised and directed by the Minister of Education. The school board is made up of members elected by residents, one representative elected by the parents' committee for primary services and another for secondary services. The duties of the board are to:

- ensure that the persons under its jurisdiction receive the education services to which they are entitled;

- be responsible for adult education services;
- establish a facilities distribution plan every three years;
- consult orientation committees and parents' committees, and
- enter into agreements with other school boards or agencies for the provision of services (handicapped, junior kindergarten, adults, primary, secondary, vocational or other).

The school board's duties related to education services (instruction) are to ensure application of the basic school regulation (*régime pédagogique*) established by the government. It sees to it that all the required sections of the programs of study are taught. Its further duties are related to human resources, material resources and transportation. In general the Act ascribes duties rather than powers to school boards, which are governed by decisions made at the provincial level.

School boards must establish school committees in each school. These advisory committees distribute information issued by the school boards, since one parent sits on the board as an elected trustee. If the school board manages both a primary and secondary program, two of the trustees must be parents.

The latest reforms, mainly Bill 107, promise greater local power because of the requirement to establish orientation committees. In fact the aim of the Act, as stated in the preamble, is to provide language-based school boards and allow for increased local participation:

The Bill (Bill 107) is designed to make the school legally more independent of the school board, while preserving its organizational links with the board and the other schools connected with the board. It gives both the school and persons acting for the school a larger say in the decisions of the school board.

The Bill provides for the division of the territory of Québec into French language school board territories and English language school board territories. The school boards will have jurisdiction over preschool, elementary and secondary education. (pp. 2-3) [trans.]

Bill 107 was adopted on second reading in 1988, but some clauses have not yet been promulgated; its aim is to make the law better reflect socio-linguistic conditions in the province. It provides specifically for the division, by government decree, of the territory of Quebec into Francophone and Anglophone school boards with jurisdiction over preschool, primary and secondary education. The clause will not be promulgated until the Quebec government verifies its constitutionality with respect to the Constitution Act, 1867, by referring it to the Quebec Superior Court. To ensure the Act's constitutionality, the continuance of the right to religious dissidence is restricted to school boards established before 1867, i.e. the dissentient Catholic school boards of Greenfield and Portage-du-Fort, and the Protestant dissentient school boards of Baie-Comeau, Laurentienne and Rouyn, the Island of Montreal and Quebec City.

Although the provisions of the new Act are important for the Anglophone minority of Quebec, the delay in promulgation has been a cause for anxiety among a minority which, for the past 15 years, has witnessed the erosion of education service standards and homogeneity. Alliance Quebec suggests that the Act, the goal of which is to establish language-based school boards, be put into force immediately as "the English-speaking community can no longer afford delays" (1988, p. 10).

Alliance Quebec also urges the Quebec government to negotiate a constitutional amendment to section 93 of the Constitution Act, 1867:

The urgency of a remedy to problems inherent in present education structures may be felt most keenly by the English-speaking community. Nonetheless, the notion of constitutional amendment is not inimical to the majority community of Quebec. Constitutional amendment can confirm the validity of the present proposal for structural reform and thus enable the Government to proceed quickly with the creation of English and French school boards in Quebec. (1988, p. 11)

Amendment of the Constitution Act would give constitutional guarantees to the Anglophone minority of Quebec.

C. SUMMARY

The Quebec Anglophone minority and the Francophone minorities elsewhere in the country obviously have far different histories. A network of facilities throughout the province has historically met the needs of the minority from preschool to university levels. However, the English-language minority has no formal guarantee of decision-making powers. The restructuring of the school system along language-based lines now in progress (Bill 107) will give the minority access to governance. The vast majority of Anglophones who live in Montreal and Quebec City do not know what effect the restructuring will have, since the language-based school boards will probably be grafted on to existing denominational boards.

Another factor with an impact on recognition of the rights and requirements of the English-language minority in Quebec, is polarization of local and provincial decision-making powers. The new education reforms increase local participation by requiring the establishment of orientation committees. This innovative measure follows the contemporary trend toward local autonomy through greater involvement of the persons affected by the decisions, i.e. the parents. This approach might better meet the needs of the minority. However, system centralization within the Ministry of Education, which holds much of the decision-making power, is an additional source of worry for the official language minority.

In spite of being in a better position than the Francophone minorities, the English minority population is declining in size: this is the principal conclusion to be drawn from our examination of Anglophone minority education in Quebec.

With respect to minority language instruction, we have seen that enrolment in school board programs of instruction for the minority (kindergarten through grade 11) totalled 111,178 pupils in 1986, or the equivalent of 127.9% of school-age English mother tongue children. If paragraph 23(1)(a) had been applied in Quebec in 1986, it would have generated an eligible enrolment of 121,513 school-age children. Actual enrolment in school board programs for the minority represent the equivalent of 91.5% of this enrolment. The conclusion is that the eligibility criteria in paragraph 23(1)(b) (language of primary instruction of parent) and subsection 23(2) (language of primary or secondary instruction of a brother or sister) currently in force generate an enrolment approaching the enrolment that would be generated on the basis of mother tongue of a parent (23(1)(a)).

Publicly funded private schools serving the English-language minority were also studied. These schools, 80% funded by the Ministry of Education, along with the school boards, serve the equivalent of 137.8% of 6 to 17-year old English mother tongue children, and the equivalent of 98.6% of the children who would be eligible under paragraph 23(1)(a).

School management is one of the main problems faced by a minority which, at present, is divided between two denominational systems. Bill 107 brings school structures more in line with the linguistic reality of the province. However, promulgation of the clause establishing language-based school boards will have to wait a few years, as it is the subject of a constitutional reference. It is for this reason that the Anglophone minority of Quebec is asking for an amendment to the Constitution Act, 1867, in the immediate future to provide the guarantees it considers essential.

VIII. NEW BRUNSWICK

A. BACKGROUND

- 1784: New Brunswick separates from Prince Edward Island and Nova Scotia and becomes an independent state.
- 1829: A redrafting of the Grammar School Act prohibits all religious instruction.
- 1867: New Brunswick joins Confederation. Instruction is given in French, but with no official recognition.
- 1871: Under the Common Schools Act, public instruction becomes non-denominational and free. It is financed by government grants and an obligatory tax. All subjects are taught using English textbooks, but French reading and grammar are taught in the Acadian schools.
- 1875: Following a riot at Caraquet and Catholic opposition to the 1871 Act, religious instruction is permitted before or after the school day. Francophones establish a private school system.
- 1944: The government appoints a Francophone assistant to the Chief Superintendent of Schools.

- 1964: Two deputy ministers (one Anglophone and one Francophone) are appointed to the Ministry of Education. The University of Moncton is established.
- 1966: As a result of the Byrne Commission, small instructional units are amalgamated. The homogeneity of small Francophone units disappears and, in some regions, *de facto* management of Acadian schools by Francophones is assumed by the new school boards.
- 1969: The Official Languages Act is adopted unanimously by the Legislative Assembly.
- 1973: The report "Education Tomorrow" recommends creation of unilingual districts where the population requests them.
- 1974: A Francophone division is established within the Ministry of Education, thus creating two parallel structures — one for Francophones and one for Anglophones.
- 1977: Some provisions of the Official Languages Act come into force: French mother tongue pupils are to be taught in French and English mother tongue pupils are to be taught in English.
- 1977: The Ministry of Education is empowered to create advisory committees to advise school boards on instruction to minority groups.
- 1979: The *Report of the Committee on the Organization and Boundaries of School Districts in New Brunswick* recommends that the schools be organized according to mother tongue and that the school districts be established on the basis of language.
- 1981: Minority school boards are established to remedy the situation in areas where the population is too small for a majority school board. The recommendations of the 1979 *Committee Report* are implemented: schools are classified by mother tongue, and school boards are organized on the basis of language. Francophones have acquired full management of their homogeneous school facilities.
- 1983: A decision by the Court of Queen's Bench states that bilingual schools are centres of assimilation and that immersion is designed for Anglophones, not the Francophone minority.
- 1985: Ministry of Education budget allocations are restructured to take into account the different conditions in large and small school boards.
- 1984-
- 1986: By ministerial order, the three Francophone minority school boards are changed to regular school boards.

B. CURRENT CONTEXT

1. Statistics

According to the 1986 census, 33.5% (237,570 persons)⁸⁴ of the New Brunswick population reported French as their mother tongue (Table II-34). The French mother tongue minority in the province is relatively large and, in fact, increased by 0.5% between 1976 and 1986

(13,785 individuals); over the same decade, the province's total population increased by 4.8%.

Table II-34

Total French mother tongue population, New Brunswick, 1976, 1981, 1986

Total population		FMT	FMT/ total population (in %)
1976	677 245	223 785	33.0
1981	696 405	234 030	33.6
1986	709 445	237 570*	33.5
1986	709 440	248 630**	35.0

* Data adjusted by Statistics Canada for purposes of comparison with previous years.

** One mother tongue (French) and two mother tongues (English and French).

Source: Statistics Canada.

If we compile the results for respondents who reported two mother tongues (French and English) and respondents who reported one mother tongue (French), the French mother tongue population climbs to 248,630 individuals⁸⁵, or 2.6% of the province's total population. These figures give a more accurate picture of the population contemplated by section 23, which does not require that only one mother tongue be reported.

The laws adopted by the province over the past 20 years, more specifically the Official Languages Act promulgated in 1969, with the main clauses coming into force in 1977, have confirmed the use of two official languages in the school system and all government services. In 1982 the Canadian Charter of Rights and Freedoms reiterated the provisions. Subsection 16(2) specifies the status of the two official languages in the legislature and government.

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

The language of communication (English or French) for receiving any government service is also specified in section 20 of the Charter. These provisions make New Brunswick a bilingual province providing a context that favours development of the official language minority.

The French fact in New Brunswick dates from the first Acadian settlers. Later immigration occurred mainly in three large waves. In the 1780s, the United Empire Loyalists settled in

the Saint John river valley and on the shores of the Bay of Fundy. Around 1840 Irish immigrants settled in Saint John. In the mid-nineteenth century, Francophones from Quebec gradually moved into New Brunswick, mainly along Chaleurs Bay. In the 1881 census, there were 58,635 Acadians in New Brunswick, 16% of the total population (Arsenault, 1978, p. 359). Today's Francophone population is concentrated in the northwest, northeast and southeast of the province.

Under the Official Languages Act, provisions on the language of instruction in the schools came into force in July 1977. The provisions specify that French mother tongue pupils are to be educated in French and English mother tongue pupils in English. Paragraph 12(c), to some extent, establishes bilingual schools:

(c) Subject to paragraph (d), where the mother tongue of the pupils is in some cases English and in some cases French, classes are to be so arranged that the chief language of instruction is the mother tongue of each group with the other official language the second language for those groups;

Amendments to the 1981 Schools Act established a system of homogeneous schools and management, even though some vestiges of a bilingual era remain in bilingual schools. The Schools Act makes it possible for a school district to offer classes or schools to members of the other official language:

- 3.1 School districts, schools and classes shall be organized on the basis of one or the other of the official languages of New Brunswick...
- 3.2 Notwithstanding section 3.1 and subject to section 3.3, a school board for a school district organized on the basis of one official language may provide for persons of the other official language classes or schools in which the language of instruction is that other official language...

In principle, the choice of the language of instruction is left to parents. However, formal Ministry of Education policy has established that the criterion for admission to instruction in French is the child's knowledge of the minority language. Access to French schools is based on oral testing.

Under these conditions, in 1986 in the public sector, instruction to the minority was offered in a total of 154 schools, 150 of them homogeneous and 4 of them bilingual, with total enrolment standing at 46,086 pupils in grades 1-12. This enrolment represents the equivalent of 99.4% of school-age (6-17 years) children whose mother tongue was French⁸⁷ (Table II-35). However *the enrolment eligible under paragraph 23(1)(a) was calculated to be 57,331 children⁸⁸. This means that the equivalent of 80.4% of eligible children were receiving instruction in the language of the minority.* In other words, four out of five children were educated in the mother tongue of their parent(s).

If the enrolment in bilingual schools is subtracted from the figures in Table II-35, the result is the enrolment in homogeneous schools⁸⁹. In 1986, according to Ministry of Education data, four schools were not homogeneous: Ecole La-Rivière in district 6 of Shippagan, where the enrolment included six Anglophone pupils; Cité des Jeunes A.-M.-Sormany d'Edmundston (district 33), where 80 Anglophones shared premises with 1,346 Francophones; Ecole Cormier, where 48 pupils in an English program and 15 pupils in an immersion program shared premises with 611 Francophones; and Ecole Saint-Paul, where enrolment included 66 Anglophones and 161 Francophones. For consistency with the criteria used for homogeneous schools in the other provinces, Table II-36 contains data on homogeneous schools only. In any event, the percentage of Anglophones in these French schools is very small.

As we have seen, 150 homogeneous schools were in operation in 1986. Francophone enrolment in homogeneous schools totalled 43,737 children, the equivalent of 94.4% of mother tongue French school-age children. *The enrolment in homogeneous schools represents the equivalent of 76.3% of the children eligible under paragraph 23(1)(a) of the Charter.*

Table II-35

Public schools providing instruction to the minority, New Brunswick, 1986

Schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
154	46 086	46 350	99.4	57 331	80.4

Sources:

* New Brunswick Ministry of Education. *Statistics: Pupil Enrolment by school, 1986-87.*

** See Table II-5.

Table II-36

Homogeneous public schools, New Brunswick, 1986

Homogeneous schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
150	43 737	46 350	94.4	57 331	76.3

Sources:

* New Brunswick Ministry of Education. *Statistics: Pupil Enrolment by school, 1986-87.*

** See Table II-5.

Progress occurred between 1986-87 and 1988-89. Although enrolment in programs of instruction for the minority fell by 1.5% (690 pupils), majority provincial enrolment

fell by 2%. By 1988-89, only two non-homogeneous schools remained, with very small Anglophone enrolments (six in Ecole La Rivière, and 15 in Cité des Jeunes A.-M.-Sormany). For this reason their enrolment is no longer considered a bilingual school enrolment, even though Table II-37 suggests the existence of two bilingual schools. Furthermore, beginning in September 1990, the Cité des Jeunes Anglophone pupils are to be taken to a school in Anglophone district No. 54. Bilingual schools in New Brunswick are heading for extinction. In three years enrolment in homogeneous schools has risen by 3.8% or 1,659 pupils (Table II-37).

For the 1989-90 school year, Statistics Canada estimates the enrolment in grades 1-12 of schools offering programs of instruction to the Francophone minority to be 44,990 pupils, a drop of 0.9% from 1988 enrolment and 2.4% from 1986 figures.

Table II-37

Comparison of enrolments and public schools, New Brunswick, 1986-87, 1988-89

	1986-87	1988-89	Increase Decrease (in %)
Schools providing instruction to the minority	154	154	0
Enrolment	46 086	45 396	(-1.5 %)
Homogeneous schools	150	152	1.3
Enrolment	43 737	45 396	3.8

Source: New Brunswick Ministry of Education. Statistics: *Pupil enrolment by school 1986-87 and 1988-89*.

2. Description of school system

Since 1981 the school system in New Brunswick has been organized on the basis of the language of the majority in a district. The organization is based on the recommendations contained in the *Report of the Committee on the Organization and Boundaries of School Districts in New Brunswick* (1979), which commented on the satisfaction expressed regarding the unilingual Moncton school board, established in 1971, and the Bathurst board, established in 1978:

Many argued that the system works well in both places, that greater harmony and respect for each other exist between the two groups, with each one running its own schools in its language without any conflict with the other group.
(p. 53)

In New Brunswick parallel education services exist locally, regionally and provincially. In the Ministry of Education, two of the three divisions are organized on the basis of language.

A Francophone deputy minister heads a Francophone division responsible for services to Francophones; and a parallel division handles Anglophone education services. Each division covers the following services: pedagogical development (programs of study and student services), evaluation and development (teacher evaluation and pedagogical development) and financial services to school boards. The third division, administration and finance, handles financial services to the school boards: transportation, equipment, textbooks, buildings, teacher certification and personnel administration.

The New Brunswick school system is more centralized than the systems in most of the other Canadian provinces. The Minister of Education delegates few of the provincial powers traditionally exercised by the Ministry of Education; the Minister always has the final word. For example, all property belongs legally to the province and the school boards are required to provide detailed inventories. The Minister may transfer materiel from one school district to another. Budgets are approved by the Minister, who allocates all funds; the school boards may collect taxes only in exceptional cases. The province decides on the site, location and construction of schools. The remuneration of teaching and administrative staff is negotiated provincially with the Ministry, which also pays the salaries. Other Ministry powers include:

- preparing the district budget for each school board;
- establishing a teacher training system; and
- prescribing or approving school organization, programs of study, services and courses.

A double boundary school map divides the province into two sets of school districts, one for each language group. Anglophone and Francophone school boards have the same powers and responsibilities. As determined by the Lieutenant Governor in Council, a school board is composed of 7, 9 or 11 elected members who must reside in the area in which they run as candidates. When a seat falls vacant, the Lieutenant Governor appoints a replacement.

The trustees are elected in districts divided into electoral areas, each of which contain approximately the same population. Out of a grand total of 42 school districts, 15 French-language majority school boards run schools in which the mother tongue is French and 24 English-language majority school boards run schools in which the pupils are Anglophones.

In areas where population density is low, minority school boards have been set up in accordance with section 18.1(1) of the Schools Act, within six months or earlier on the initiative of the Minister under the following conditions:

- ... where parents (b)(i) who reside in that school district, (ii) whose language is the official language which is not the official language on the basis of which the school district is organized, and (iii) who are the parents of not less than thirty children of elementary school age, submit a request in accordance with the regulations...

Establishment of a minority school board may precede or follow establishment of a school. Minority board trustees are appointed by the Minister with the approval of the Lieutenant Governor in Council for a three-year term; the number of trustees (between 3 and 5) is set by the Minister. Minority school boards have the same powers and responsibilities with respect to the operation and administration of schools under their control as regular school boards.

However, because of the small number of pupils enrolled, some of the school boards are not able to offer all the educational and administrative services offered by the district majority school board. As a result, the minority board may, and sometimes must, reach agreements with other school boards with regard to services (e.g. transportation). In addition, the board's administrative and supervisory duties (e.g. pedagogical services) may be carried out by Ministry of Education regional staff.

Although four minority school boards have been established, there is in fact only one in operation: the English-language board in Edmundston, which manages a single school, St. Mary's Academy, which had a 1988-89 enrolment of some 151 pupils. The Francophone minority school boards in Fredericton (district 51), Saint John (district 52) and Newcastle (district 53) have become regular school boards. We have nevertheless described the minority school board structure as it represents an important step in the evolution of minority school management.

In 1985 a Ministry order changed the budget structure for sums allocated to school boards to allow for regional disparities between large and small school boards. In fact the minority school boards which have become regular school boards are far smaller than the other boards. Grants are currently made on the basis of three main factors:

1. programs and services offered by all school boards,
2. location of school district and number of pupils, and
3. staff assignment framework, which requires a range of personnel resources in spite of small enrolment.

The evolution in New Brunswick official language minority school management structures is a good example of recognition of the principle of linguistic duality. The progress of the process may be objectively traced. In 1977 a section of the Official Languages of New Brunswick Act was promulgated giving the Minister of Education the power to create advisory committees to advise school boards on instruction for minority groups. In 1981 these committees produced minority school boards which were, and still are, a transitional measure taken to deal with the existing situation in areas where low population density cannot support a majority school board. This imaginative solution, the result of an historic process, has enabled the New Brunswick Francophone minority to face the future more confidently than the French-language minorities in other Anglophone provinces of Canada.

Furthermore the climate of trust created by a parallel structure has promoted the demolingistic conditions discussed earlier.

Foucher summarizes the favourable New Brunswick context with respect to section 23 of the Charter as follows:

Of the three Maritime provinces, New Brunswick has complied most fully with the requirements of section 23 of the Charter, despite [some] problems... In the present circumstances in the province these problems are more theoretical than practical; the thorniest disputes over the interpretation of constitutional rights to instruction in French will not be coming from New Brunswick in the near future. (1985, p. 67)

However, demands have not come to an end in New Brunswick. Although the education situation is clearly acceptable compared to that of other Francophone minorities, there is still anxiety about the long-term future of the Acadian community. In the words of one spokesperson:

We live daily with a 7% rate of assimilation into the English community. And on top of this, our birth rate has fallen below that of the Anglos. The immigration flow, of course, is always in their favour. (in Winter, 1988)

It must also be remembered that, since the pupils eligible under paragraph 23(1)(a) for instruction in the language of the minority do not all attend minority institutions, there is still progress to be made. In principle, the equivalent of one child in five (20% of eligible school-age children) is not being educated in the language of the Francophone minority. There are grounds for further research into the causes of this situation, and the impact of freedom of choice (by parents and children) regarding language of instruction. A research project could indicate whether or not language upgrading courses or any other remedial measure is desirable in New Brunswick.

C. SUMMARY

Historically, the New Brunswick official language minority has obtained education services comparable to those provided to the majority, plus a complete management system. These gains, partly attributable to the demolingistic weight of the minority (33.5% in 1986), have made the province the only one in Canada to currently provide its Francophone minority with a system parallel to the majority system. Its status as a bilingual province entrenches the education rights.

In the area of instruction as such, the enrolment in schools delivering programs of instruction to the minority totalled 46,086 pupils in grades one through twelve for the 1986-87 school year. This enrolment represents the equivalent of 80.4% of school-age (6-17 years) children

eligible under paragraph 23(1)(a) of the Charter. Furthermore, most schools which deliver instruction to the minority (all but 4) are homogeneous. Enrolment in homogeneous schools represents the equivalent of 76.3% of school-age children eligible under paragraph 23(1)(a). Between 1986-87 and 1988-89, most of the progress made is due to the transformation of bilingual schools into homogeneous schools: homogeneous school enrolment increased by 3.8% (1,659 pupils).

The New Brunswick French official language minority has gained full control of school management. In fact two parallel management systems for the two language groups are in force. Although all the schools which deliver instruction to the Francophone minority are now controlled by Francophone school boards, this was not always the case. The parallel system evolved slowly, through the following stages: optional advisory committees, obligatory advisory committees, minority school boards and, finally, regular school boards.

IX. PRINCE EDWARD ISLAND

A. BACKGROUND

- 1758: Deportation of the Acadians from Prince Edward Island removes a large proportion of the Francophone population from the Island.
- 1764: The deported Acadians are authorized to return home after swearing allegiance to the British Crown.
- 1815: First Acadian school founded at Rustico.
- 1825: The first education legislation guarantees government financial assistance to any schools with 10 male students. A five-member board supervises public expenditure.
- 1854: An amendment to the education legislation makes the teaching of English obligatory in Acadian schools.
- 1861: Acadian schools must have at least 18 pupils to be entitled to public funding.
- 1863: An amendment to the education legislation abolishes the "Acadian teacher" category. Normal school training is the only requirement for teaching, with a knowledge of French no longer required. This measure leads to anglicization of Acadian schools.
- 1873: Prince Edward Island joins Confederation.
- 1877: The Public Schools Act establishes obligatory, non-denominational instruction. Textbooks are standardized and French-language textbooks are withdrawn because of their religious content.
- 1881: Protests by Acadians lead to authorization of bilingual books.
- 1885: Prince County, where most of the Island's French population lives, has a total of 27 public Acadian schools.
- 1892: An Acadian inspector is appointed to supervise teaching in Acadian schools.

- 1945: The Ministry of Education is created.
- 1960: The Ecole Régionale Evangéline is established in Abram Village. It is the first secondary level Acadian school, and one of the first regional schools in the province.
- 1965: The Ministry of Education undertakes consolidation of elementary schools.
- 1971: The 217 small school districts are reorganized into five regional school boards. Sixteen Acadian schools are merged with English majority schools. The teaching of French is authorized in the Unit 5 (Evangéline) school board.
- 1972: When the small school boards are consolidated, the Evangéline school unit is left intact. It becomes Unit 5, in which French is the language of administration and teaching.
- 1980: The School Act is amended, and for the first time gives Francophone pupils the right to be educated in French. The school boards are required to deliver instruction in the language of the minority when at least 25 pupils are enrolled in three consecutive years in grades 1-9.
- 1987: The decision on a reference to the Prince Edward Island Court of Appeal specifies that the provincial legislature must establish the "sufficient numbers" for instruction and facilities, and that the minority is entitled to participate in developing and implementing programs. The School Act is declared unconstitutional because it restricts instruction to the geographic area of the school boards. The minority programs must be actively offered by the Francophone authorities.
- 1990: Amendments to the School Act extend the jurisdiction of the Francophone school board from Unit 5 to the entire province. The opening of new French classes is also permitted when there are 15 pupils in two consecutive grades.

B. CURRENT CONTEXT

1. Statistics

Historically, it is estimated that some 200 individuals in some 30 Acadian families remained on the Island after the deportation of the Acadians in 1758. They lived on the northern part of the Island and worked as fishermen for British subjects (Arsenault, 1978). In 1805, Prince Edward Island had a population of approximately 7,000 inhabitants of French, Scottish and Loyalist descent. In the next 25 years, many immigrants from the United Kingdom settled on the Island. By 1833 the Francophones were lost in a population estimated at 30,000; the 1881 census enumerated 10,751 Acadians, 9.9% of the Island's total population.

Table II-38

Total French mother tongue population, Prince Edward Island, 1976, 1981, 1986

Total population		FMT	FMT/ total population (in %)
1976	118 230	6 545	5.5
1981	122 505	6 080	5.0
1986	125 650	5 920*	4.7
1986	126 645	6 500**	5.1

* Data adjusted by Statistics Canada for purposes of comparison with previous years.

** One mother tongue (French) and two mother tongues (English and French).

Source: Statistics Canada.

In 1986 the Island's population totalled 126,650 individuals⁹⁰. The French mother tongue population accounted for 4.7% of the total, or 5,290 individuals. The proportion was down 0.3% (169 persons) from the 1981 figures and 0.8% (625 persons) from 1976 (Table II-38). If we compile the results for respondents who reported two mother tongues (French and English) and one mother tongue (French), the French mother tongue population climbs to 6,500 persons⁹¹. These figures give a more accurate picture of the population contemplated by paragraph 23(1)(a) than the adjusted data, as the paragraph does not require there that only one mother tongue be reported.

The Francophone population is concentrated mainly (80%) in the western part of the Island and in Prince County, where it accounts for 11.5% of the population (mainly in Tignish, St-Louis and Summerside-Miscouche). In the Evangéline area, the Francophones are concentrated in Abram Village, Wellington and Mont-Carmel. In Queen County, they live mainly in Rustico and Charlottetown.

Numerically, the Island's Francophone population classifies it with a group of provinces in which the official language minority population is close to 5%; the others are Ontario (5.8%), Manitoba (5.3%) and Nova Scotia (4.5%). This means that its political weight is analogous to that of the Francophones in these provinces.

The education situation of Prince Edward Island Francophones has benefited from a series of court challenges which are now producing results. In 1982 the parents of 17 pupils petitioned Anglophone school unit 2 for a first grade class in Summerside. The petition was rejected. It was submitted again in 1983 and 1985, and rejected on both occasions. The school board decided that the number was insufficient, but proposed enrolment in an immersion program. The Minister of Education refused to intervene. The matter was referred to the Court of Appeal. The decision rendered in 1988 specifies that the School Act is unconstitutional for the following reasons:

- the Act confers instruction on children whose mother tongue is French, whereas the Charter confers rights on parents whose first language learned and still understood is that of the minority;
- the Act restricts the right to instruction to the geographic boundaries of the school boards, whereas the Charter specifies “everywhere in the province”;
- the Act confers the right to instruction, but not to schools as does section 23;
- the Act should not enable school boards to make decisions on the minority programs offered; and
- the Act is silent on minority participation in program development and implementation.

As a result of the reference to the Court of Appeal, the School Act was amended as follows:

47. (2) Where numbers warrant, French language instruction shall be provided in accordance with the regulations to children of citizens of Canada who have the right under section 23 of the Charter to have their children receive primary and secondary school instruction in French in the province.
- (3) Where numbers warrant, French language instruction provided pursuant to subsection (2) shall be provided in French language educational facilities in accordance with the regulations.

Furthermore, in 1990 the Regulations were amended to specify categories of parents eligible for the rights conferred by section 23. The categories are inspired by the Charter:

- 6.02 Subject to section 6.03, parents who are residents of Prince Edward Island are eligible to have their children receive French language instruction where numbers warrant if they meet one of the following criteria:
 - (a) the first language learned and still understood of the parent is French;
 - (b) the parent received primary school instruction in Canada in French as a first language; or
 - (c) one or more children of the parent has received or is receiving French language instruction in Canada at the primary or secondary level.

Section 6.3 of the Regulations specifies the registration procedure for instruction in French, which involves a statement of eligibility for the unit 5 Francophone school. The Minister of Education reserves the right to review and decide a parent's eligibility.

The offer of educational services to the Francophone minority may be of three kinds: establishment of French classes, transportation to an area other than the area of residence, and designation of a French school. The first two services are the responsibility of the unit 5 Francophone school board; designation of a school as French is the responsibility of the Minister of Education. However, the Francophone school board must obtain the Minister's approval before commencing to offer services, which action remains conditional on the "where numbers warrant" clause. The number is set at 15 pupils in two consecutive grades.

The Act and the regulations prior to 1990 had the effect of permitting instruction in French in unit 5, Prince County. Under the jurisdiction of the Francophone school board established in 1971 and extended to the entire province in 1990, the county's homogeneous school (l'Ecole Evangéline) had an enrolment of 465 children in 1986-87, the year which concerns us here. In the same year the Ecole François-Buote in Charlottetown, founded in 1980, had an enrolment of 32. These two schools represent the sum total of enrolment in grades 1-12 in the minority language. There are no Francophone private schools. Table II-39, which shows the enrolment in the minority schools, is similar to Table II-40 (homogeneous schools)⁹². The figures indicate that a total of 497 pupils were being educated in programs designed for the minority. This enrolment represents the equivalent of 70.4% of school-age (6-17 years) children who had French as a mother tongue⁹³. On the other hand, *the enrolment eligible under paragraph 23(1)(a) totalled 2,280 children*⁹⁴. *This means that the enrolment in minority programs represents the equivalent of 21.8% of eligible children.*

Table II-39

Public schools providing instruction to the minority, Prince Edward Island, 1986

Schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
2	497	706	70.4	2 280	21.8

Sources:

* Prince Edward Island Ministry of Education and Council of Ministers of Education. *Report on French and English-Language Education in minority settings*, 1989.

** See Table II-5.

Table II-40

Homogeneous public schools, Prince Edward Island, 1986

Homogeneous schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
2	497	706	70.4	2 280	21.8

Sources:

* Prince Edward Island Ministry of Education and Council of Ministers of Education. *Report on French and English-Language Education in minority settings*, 1989.

** See Table II-5.

Progress was made between 1986-87 and 1988-89. Enrolment in the two homogeneous schools which offer the only programs of instruction to the minority increased 2%, from 497 to 507 pupils in grades 1-12 (Table II-41).

Table II-41

Comparison of enrolments and public schools, Prince Edward Island, 1986-87, 1988-89

	1986-87	1988-89	% Increase
Schools (homogeneous) delivering instruction to the minority	2	2	0
Enrolment	497	507	2

Sources: Council of Ministers of Education. *Report on Education on Prince Edward Island*, 1989.

For the 1989-90 school year, Statistics Canada estimates the enrolment in grades 1-12 of schools offering programs of instruction to the Francophone minority to be 520 pupils, an increase of 2.6% over 1988 enrolment and 4.6% over the 1986 figure. Further progress is being made. In September 1990 two 15-member French classes will be offering instruction in French in Summerside.

Many Acadian children attend immersion schools. In 1986-87, the province had the second highest percentage of its total school enrolment in immersion (11% or 2,692 pupils).

2. Description of school system

The Prince Edward Island school system is non-denominational and public. The province is divided into four Anglophone instructional units and one Francophone instructional unit which covers the entire province.

The Ministry of Education is divided into two divisions: (1) programs and services and (2) administration and finance. In the program development section, a pedagogical advisor oversees preparation of programs for Francophones at all levels. The position does not involve any decision-making powers.

The 1988 amendment to the School Act gives the Lieutenant Governor in Council a number of powers.

51. The Lieutenant Governor in Council may make regulations with respect to French language instruction and, in particular,
 - (a) prescribing the method for determining those who are entitled to receive French language instruction in the province;
 - (b) establishing procedures for determining the demand for French language instruction in the province;
 - (c) providing for the admission of students to French language instruction;
 - (d) providing for the method for determining the location of French language educational facilities;
 - (e) establishing rules respecting the meaning and application of the term "where numbers warrant";

The Minister of Education is empowered to:

- prescribe teaching standards;
- approve textbooks;
- adopt the school year calendar;
- purchase, lease or accept donations of land;
- construct and improve school buildings;
- approve budgets presented by the school boards; and
- establish categories and classes of teaching certificates.

Each of the five units is managed regionally by a 15-member school board with a three-year mandate. Ten members of the Francophone school board come from the administrative area formerly known as unit 5, and five other members are elected in the other parts of the province. Eligibility for the board of trustees of the Francophone school board is dependent on eligibility under section 23.

The school boards have the following duties:

- maintaining all school property in good condition;
- offering free instruction to all persons between the ages of 6 and 20;
- consulting teachers on assignment of pupils to classes;
- hiring teachers by written contract and, where applicable, suspending or dismissing a teacher in compliance with the regulations; and
- establishing the conditions for admission to and attendance of these schools.

The School Act guarantees four privileges to all pupils in the province: instruction, transportation, textbooks and all necessary services.

The question of school management by the Francophone minority is the subject of a subsection in the 1988 amendment to the School Act. Subsection (4) of section 50 confers on the minority a right to participate in development and delivery of programs, as specified by the Court of Appeal:

50. (4) Citizens of Canada who

- (a) are residents of the province; and
- (b) have the right under section 23 of the Charter to have their children receive primary and secondary school instruction in French in the province,

have the right to participate in French language instruction program development and delivery.

In actual fact the right to participation enacted in the School Act is specified in Division C of the amendments to the Regulations. The subject is a French school board, which has the following responsibilities:

6.05 (1) The French school board shall have jurisdiction over and administer French language instruction in the province in accordance with the Act and the regulations.

The language of administration and work is clearly specified as French. Administration headquarters are located in Abrams Village, Prince County. The French school board is also responsible for promoting and distributing information on instruction in French throughout the province.

The future of education for Prince Edward Island Acadians is encouraging. Acadians have a strong instinct for survival. An observer has described them as follows:

Acadians are not complainers. They are used to the predominance of English in most spheres of life outside their own group, but, given the opportunity,

they would jump at the chance to receive more and better French-language services from any level of government. (Sloan, 1987, p. 18)

Some of the Acadians' traditional methods of self-defence, for example the cooperatives (purchasing, production and services), give them a feeling of solidarity and unity within a framework of French-language institutions. Urbanization, the media and development of individual values have produced a situation in which homogeneous schools will be called upon to play a predominant role in developing the Acadian community.

C. SUMMARY

Historically, many setbacks which the Prince Edward Island official language minority has suffered have tended to drown Acadians in an Anglophone majority sea (e.g. prohibition of teaching in the minority language, consolidation of schools and school districts with majority schools and districts). Since 1960, primary and secondary instruction have been delivered in the Evangéline area, where a large number of the Acadians live. Since 1971 the Evangéline school board (unit 5) administers the education at l'Ecole Evangéline. The island Francophones won complete management of their school system through establishment of the provincial Francophone board. In 1990, the unit 5 school board is to be extended to the entire province.

As to instruction, the Statistics Canada special compilation shows that, in 1986, the enrolment eligible under paragraph 23(1)(a) of the Canadian Charter of Rights and Freedoms (mother tongue of a parent) totalled 2,280 school-age children. The enrolment in schools delivering programs in the language of the minority represents the equivalent of 21.8% of the eligible enrolment. This indicates that the equivalent of four children in five are not educated in the language of the minority. Because of the restricted offer of services (two schools to serve an entire province, however small), it is evident that this factor may be partly responsible for the observed disparity between actual school enrolment and eligible enrolment. A clearer picture of the reasons for the disparity requires more in-depth research.

School administration for and by the official language minority is implemented by a provincial and Francophone school board (unit 5).

X. NOVA SCOTIA

A. BACKGROUND

- 1701: First French school founded at Port-Royal.
- 1713: Under the Treaty of Utrecht, continental Nova Scotia is ceded to England.
- 1749: An emigration movement from Nova Scotia to the neighbouring French territories begins; the Acadians fear for their safety in light of England's power.

- 1755: The deportation of the Acadians removes the Francophone population of Nova Scotia.
- 1764: The deported Acadians are authorized to return home after swearing allegiance to the British Crown.
- 1766: The first education legislation prohibits establishment of "papist" (i.e. Catholic) schools.
- 1786: The 1766 prohibition is lifted and Catholics are allowed to found schools, but the teachers must swear allegiance to the King of England and renounce the authority of the Pope.
- 1811: The Grammar School Act provides for the appointment of school trustees.
- 1832: The government undertakes the funding of schools, including the Acadian schools in Halifax. Each school district must have a school board.
- 1841: The law recognizes public funding of schools that teach French, Gaelic or German.
- 1864: The Public School Act introduces a system of public schools funded by government grants and local taxation. The Acadian schools are forced to close wherever there is a public school.
- 1867: Nova Scotia joins Confederation.
- 1902: The Acadian Commission recommends instruction in French for the children of Acadians during the first four years of elementary school and instruction in English for the subsequent years. The recommendations are gradually put into force but later abandoned.
- 1908: Following a petition by the Acadians, a regulation permits the use of French in grades one through four, but stresses the learning of English and the power of the trustees to hire English-language teachers.
- 1950: A Minister of Education is appointed.
- 1981: The 1981 Education Act provides the first definition of the Acadian school (school in which instruction is given in French); on recommendation by the Minister of Education, the Act empowers the Lieutenant Governor in Council to grant the status of Acadian school to a school following the request by one or more school boards. The Minister is also empowered to establish the duration of instruction in French, set a program of study and authorize textbooks.
- 1982: As a result of the Walker Commission Report "Public Finance Education", 76 school boards in the province are consolidated into 21 district units.
- 1987: The parents of Sydney petition the Supreme Court of Nova Scotia to obtain management of a homogeneous school. Location of the school and "sufficient numbers" are further points of litigation.
- 1988: Following the offer of a school by the Cape Breton District School Board and enrolment of the children eligible under section 23, the Court decides, on the advice of the Minister of Education, that the number is insufficient and the costs are exorbitant.
- 1989: The Court of Appeal overturns the Trial Court decision and estimates that the number is sufficient for instruction, but insufficient for establishment of an autonomous, homogeneous school.

B. CURRENT CONTEXT

1. Statistics

The history of the Acadian people is eventful and stormy. In 1881 the Acadian population of Nova Scotia totalled 41,219, or 9.8% of the total population (Arsenault, 1978, p. 350). In 1986 the Nova Scotia French mother tongue population totalled 35,810 individuals⁹⁵, or 4.1% of the provincial population (Table II-42). The data indicate that the proportion has fallen 0.4% since 1976 and an additional 0.1% since 1981.

If we compile the results for respondents who reported two mother tongues (French and English) and respondents who reported one mother tongue (French), the 1986 French mother tongue population climbs to 39,350 persons⁹⁶. This figure gives a more accurate picture of the population contemplated by paragraph 23(1)(a) than the adjusted data, as the section does not require that only one mother tongue be reported.

The Francophone population is concentrated in the following areas and towns: Clare, Argyle, Inverness, Chéticamp, Saint-Joseph du Moine, Margaree, Ile Madame and Halifax. Because the population is more rural than urban, local language transmission is relatively easy. However, as the larger towns provide most services in English (90% or more), Francophones lose their homogeneity when they leave their place of birth. Nova Scotia is one of a group of provinces which has an official language minority classified as significant⁹⁷; the others are Prince Edward Island (5.1%), Manitoba (5.3%) and Ontario (5.8%).

Table II-42

Total French mother tongue population, Nova Scotia, 1976, 1981, 1986

Total population		FMT	FMT/ total population (in %)
1976	828 575	36 870	4.5
1981	847 440	36 030	4.2
1986	873 165	35 810*	4.1
1986	873 175	39 350**	4.5

* Data adjusted by Statistics Canada for purposes of comparison with previous years.

** One mother tongue (French) and two mother tongues (English and French).

Source: Statistics Canada.

In 1981 the Acadian school was defined for the first time in law. In 1983 the Ministry of Education defined its role as:

- (a) contributing to the preservation and advancement of the French-language and culture of the Acadians in their province, and

(b) assisting the Acadians in benefiting fully from their language rights.

The Acadian schools are established using a mechanism defined in the Education Act (1989), which specifies that the request must be made by one or two school boards. On recommendation of the Minister, the Lieutenant Governor in Council may grant the request. The Act reads as follows:

The Governor in Council ... may:

3 (aa) upon the request of a school board, or the joint request of two or more school boards, and upon the recommendation of the Minister, designate

(i) as an Acadian school, a school that is within the jurisdiction of the board or of the boards, and

(ii) as the area which is to be served by the Acadian school, an area in which there is a sufficient number of children, whose first language learned and still understood is French, to warrant provision of public funds for instruction to be carried out in the French language.

The language of administration and communication of an Acadian school is French (5a).

The Minister of Education regulates the proportion of the school day devoted to the language of the minority in Acadian schools:

- grades 1 and 2: 100%;
- grades 3-6: all courses in French, except the required English course;
- secondary, first cycle: at least ten courses in French (out of a total of 18 to 20), i.e. at least three courses per year in French; and
- secondary, second cycle: eight courses in French, i.e. at least two per year.

After some hesitation by the Minister, the concept of designating schools as specifically Acadian was put into force. In 1986 there were 19 designated Acadian schools in 5 school districts. One other non-designated school offered instruction to the Acadian minority. According to Ministry of Education statistics, 3,655 pupils received instruction in French in 20 schools (grades 1-12) in the public sector⁹⁸. *This enrolment represents the equivalent of 96.4% of French mother tongue school-age (6-17 years) children*⁹⁹. *The enrolment is the equivalent of 34.8% of the enrolment eligible under paragraph 23(1)(a) (Table II-43). Our count is 10,516 children*¹⁰⁰. These data point up the rate of assimilation of Nova Scotia children, and indicate that the equivalent of only one child in three who had a French mother tongue parent learned French in the home.

The schools designated as Acadian schools are not all homogeneous¹⁰¹. In 1986 enrolment in the 12 designated schools which were homogeneous totalled 1,959 pupils, or the equivalent of 51.7% of French mother tongue school-age children. Furthermore, these pupils represent the equivalent of 18.6% of the enrolment eligible under paragraph 23(1)(a), as Table II-44 shows.

Table II-43

Public schools providing instruction to the minority, Nova Scotia, 1986

Schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
20	3 655	3 791	96.4	10 516	34.8

Sources:

* Nova Scotia Ministry of Education.

** See Table II-5.

Table II-44

Homogeneous public schools, Nova Scotia, 1986

Homogeneous schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
12	1 959	3 791	51.7	10 516	18.6

Sources:

* Nova Scotia Ministry of Education.

** See Table II-5.

The progress made between 1986-87 and 1988-89 occurred mainly in the homogeneous schools (Table II-45). Between 1986-87 and 1988-89, when enrolment in all schools in the province fell 1.9% (Commissioner of Official Languages, *Annual Report*, 1988), enrolment in schools delivering instruction to the minority plunged 4.3% (grades 1-12). Conversely, enrolment in homogeneous schools climbed 1.6%. In 1989 not a single homogeneous school delivered instruction in grades 10-12.

Table II-45

Comparison of enrolments and public schools, Nova Scotia, 1986-87, 1988-89

	1986-87	1988-89	Increase Decrease (in %)
Schools providing instruction to the minority (grades 1-12)	20	18	(-10.0)
Enrolment	3 655	3 497	(- 4.3)
Homogeneous schools (grades 1-9)	12	12	0
Enrolment	1 959	1 990	1.6

Source: Nova Scotia Ministry of Education.

For the 1989-90 school year, Statistics Canada estimates the enrolment (grades 1-12) in schools offering programs of instruction to the Francophone minority at 2,850 pupils, a drop of 18.5% from the 1988 enrolment and 22.2% from the 1986 figures.

2. Description of school system

The Nova Scotia school system is non-denominational. It is administered by three distinct levels of authority (provincial, regional and local).

At the provincial level, the Minister of Education heads the Ministry and is the spokesperson in the Legislature for all questions related to education. The Governor in Council (Cabinet) is responsible for general supervision of schools and education, and is empowered to make regulations:

- respecting expenditure by way of grants;
- respecting the construction, location and control of public school buildings;
- for the determination of the minimum salaries to be paid to teachers;
- with respect to the closing of schools having enrolment of fewer than 16 pupils;
- prescribing the school programs of education;
- for the support, conduct, operation and management of schools, institutes and services; and
- delegating his authority to any designated person.

In addition the powers which the Minister is designated to implement include:

- determining the ratio of instruction in French to instruction in English;
- directing the expenditure of all sums appropriated by the Legislature for educational purposes;

- dividing the province into inspectorial divisions and exercising general supervision and direction over inspectors of schools;
- approving plans for school houses and school buildings; and
- prescribing courses of study and authorizing textbooks and related material.

The Ministry of Education performs the general duties of an organization which delivers programs of instruction, oversees their implementation and allocates adequate resources.

Regional decision-making powers are in the hands of district school trustees. The province is divided into 21 city and/or municipality school boards. At the time of the 1982 consolidation, existing districts were reorganized and the number of trustees sitting on each new board was determined. These numbers, which must be multiples of three, were submitted to the Minister for approval. School boards may be further divided into electoral sections. Nova Scotia's formula for setting up a school board is unique. Under An Act to Consolidate and Amend the Law Respecting the Membership of School Boards, one third of the trustees are elected, one third appointed by the municipal council and the other third appointed by the Governor in Council. The trustees serve for a three-year term. In general, the school board is responsible for controlling and managing schools under its jurisdiction. Its powers include:

- engaging and paying teachers;
- providing the equipment necessary for maintenance of school buildings;
- providing and paying for the conveyance of pupils to and from school;
and
- paying its own administration costs.

Through a combination of circumstances, the Clare-Argyle School Board is Francophone. It has not been designated a Francophone school board, although paragraph 3(aaa) allows the following:

The Governor in Council ... may:

upon the recommendation of the Minister, designate an Acadian district and make determinations respecting the operation of and support for an Acadian district.

The above clause may provide the authority necessary to meet the management needs of the Francophone minority by establishing either a provincial minority school board or a double boundary school map.

In Nova Scotia local boards of trustees play an advisory role. The board, made up at least three members, is elected for three years at an annual meeting of the residents in a school district section. Their role is similar to that of the Saskatchewan local advisory boards,

which represent the local interests and the general concerns of a one or two school section. Although all district school boards have the option of creating a board of trustees, the option has been implemented in very few districts. In Halifax for example, the Halifax County Board of Education schools are organized into 51 sections, nearly all of which have boards of trustees.

The board of trustees performs the duties conferred on it by the board. Under the Education Act, these include:

- communicating to the school board the opinion and recommendations of the trustees;
- visiting the schools of the section not less than twice in each year; and
- making recommendations to the school board respecting use of a school building for purposes other than regular school purposes.

In practice the trustees are also responsible for making decisions on suspension of pupils. The board of trustees plays an advisory role, reflecting the opinion of persons affected by school board decisions.

Because of the existence of boards of trustees, the parent committees common in many other provinces are not formally recognized in Nova Scotia. Only the Shannon Francophone school in Dartmouth has a parents' committee instead of a board of trustees. However Francophone parents have formed 21 parents' committees to oversee the instruction of their children at the kindergarten, elementary and secondary levels.

The Nova Scotia Francophone minority does have a system of Acadian schools and the schools which are not yet homogeneous are potentially so. For the present, young Acadians are quickly assimilated: one out of three does not learn French as a mother tongue. This means that the school has a crucial role to play. The Court challenges made by Cape Breton parents are important in that they promote minority development and counteract assimilation. The outcome has been encouraging.

The Nova Scotia Supreme Court in handing down its decision (1989) in *Laurent Lavoie et al. v. the Attorney General of Nova Scotia and the Cape Breton District School Board* gave the Acadian community hope. Whereas the Trial Court had deemed the costs exorbitant and an enrolment of 50 pupils insufficient for a school, the Court of Appeal reiterated the right to instruction, but did not consider the number sufficient for establishment of an autonomous school. Although there is hope, full section 23 rights have not been implemented. The Acadians do have strong arguments in their favour: the objectives of section 23, the sufficient numbers for eligibility under section 23, and the additional fact that Nova Scotia already has 55 elementary schools and four secondary schools with enrolments smaller than 49 pupils (Statistics Canada: 1986).

C. SUMMARY

Historically Nova Scotia Acadians have been under pressure from the majority for English to be the main language of instruction in the province's schools. Acadian schools have been obliged to close in places where an English-language public school existed (1864). The 1982 consolidation of small school districts into 21 units again drowned Acadians in the sea of the majority. Today, although the establishment of Acadian schools is recognized in the Education Act of the province, implementation is subject to approval by the Minister of Education, and the process must be instigated through a request submitted by a majority school board.

In the area of instruction as such, we have seen that, in 1986, the school enrolment in programs delivering instruction to the minority (3,655 pupils) represented the equivalent of 34.8% of the enrolment eligible under paragraph 23(1)(a) of the Canadian Charter of Rights and Freedoms. Based on a special Statistics Canada compilation, our count of the number of school-age (6-17 years) children having one minority mother tongue parent (French only or French and English) is 10,516. The enrolment in 12 homogeneous schools (1,959 pupils) is the equivalent of 18.6% of this enrolment. There is not one public homogeneous secondary school serving pupils in grades 10-12.

Implementation of official language minority school management is slow in coming. The 1986 Education Act empowers the Minister to recommend establishment of an Acadian district to the Governor in Council. In practice the Clare-Argyle school board is Francophone. A school management model for the official language minority has yet to be proposed for Nova Scotia. When homogeneous secondary schools are established, design of a management model could be the next step forward.

XI. NEWFOUNDLAND

A. BACKGROUND

- 1713: The Treaty of Utrecht cedes Newfoundland to England, with France keeping the seasonal fishing rights off the western shore.
- 1720: First schools founded in Newfoundland by the Church of England.
- 1836: The Schools Act establishes 9 non-denominational school districts, each with a 13-member board. Public funding is given to denominational groups responsible for education.
- 1843: As the result of protests, the new Schools Act specifies that each district is to have two boards, one Catholic and one Protestant.
- 1874: A new Schools Act provides for equal distribution of funding between Catholics and the various Protestant sects.
- 1904: The seasonal fishing rights given to France by the Treaty of Utrecht are extinguished, breaking formal links between France and island residents.

- 1927: The Schools Act provides for denominational schools for any denomination that wishes to have them (e.g. Roman Catholics). Each district has one school board, with the members (of the religions denomination in the district) appointed by the Governor in Council.
- 1949: Newfoundland joins Confederation. The denominational rights acquired are entrenched and all schools are publicly funded.
- 1969: The 290 school districts are consolidated to form 38.
- 1970: They Schools Act specifies that one third of school board members are to be elected.
- 1975: Inauguration of the first "bilingual" immersion school in Cap Saint-George.
- 1982: A Department advisory committee on bilingualism proposes incorporating provisions sanctioning the teaching of mother tongue French as a provincial teaching objective. The Minister of Education issues a statement of principle recognizing the right of Francophones to instruction in their mother tongue.
- 1986: The "Report of the Policy Advisory Committee on French Programs" recognizes the right of the Francophone minority to instruction in its own language in homogeneous facilities managed by the province's school boards.
- 1987: The position of teaching consultant for mother tongue French programs is created as the Ministry of Education.
- 1988: The St. John's Catholic School Board and the Attorney General of Newfoundland are sued for recognition of rights to instruction under section 23 of the Charter.
- 1989: Opening of the first French homogeneous school in Newfoundland, at Mainland.

B. CURRENT CONTEXT

1. Statistics

The first Francophones settled in Newfoundland in the first half of the nineteenth century. They came mainly from Brittany, Saint-Pierre et Miquelon and Acadia (Chéticamp, Margaree), and most of them settled on the western shore. In 1904 when formal links with France were broken with the extinction of seasonal fishing rights, the Francophone population of Newfoundland was even more isolated: in addition to the geographical isolation, the island's allegiance was now only to England.

The Francophone population of Newfoundland is still concentrated in the Port-au-Port peninsula, at Mainland, Cap Saint-George and l'Anse-aux-Canards, in Stephenville, on the Avalon peninsula in St. John's and in Labrador City. According to 1986 census data, Francophones accounted for 0.5% of the total population of the province. There were 85 fewer French mother tongue individuals than in 1976. As shown in Table II-46, the 1986 Francophone population totalled 2,670 individuals¹⁰². If we compile the results for respondents who reported two mother tongues (French and English) and respondents who reported one mother tongue (French), the French mother tongue population climbs to

3,115 individuals¹⁰³. These figures give a more accurate picture of the population contemplated by section 23 of the Canadian Charter of Rights and Freedoms than the adjusted data, as the section does not require that only one mother tongue be reported.

Table II-46

Total French mother tongue population, Newfoundland, 1976, 1981, 1986

Total population		FMT	FMT/ total population (in %)
1976	557 725	2 755	0.5
1981	567 680	2 655	0.5
1986	568 345	2 670*	0.5
1986	568 350	3 115**	0.5

* Data adjusted by Statistics Canada for purposes of comparison with previous years.

** One mother tongue (French) and two mother tongues (English and French).

Source: Statistics Canada.

French-language instruction made little progress until relatively recently. In the 1950s and 1960s, some knowledge of English was required by five years of age, before beginning school: "Any child who comes to school without knowing English is sent home" [trans.] (Waddell and Doran, 1983, p. 191). Since 1975 the popularity of French immersion has been growing in Newfoundland. However, instruction for the official language minority was not formally discussed at the Department of Education until 1982.

In 1986, according to the Newfoundland Department of Education, instruction in the language of the minority was offered in two schools operated by provincial school boards to 68 pupils in grades one through ten¹⁰⁴. This enrolment represents the equivalent of 25.5% of the French mother tongue school-age (6-17 years) children, a total of 267 pupils¹⁰⁵. This enrolment is the equivalent of 6.1% of the enrolment eligible under paragraph 23(1)(a). A special Statistics Canada compilation established this enrolment at 1,117 children¹⁰⁶ (Table II-47).

Homogeneous¹⁰⁷ schools as we have defined them (i.e. independent facilities), did not exist in Newfoundland and Labrador in 1986. Instruction in French was offered in "sections" (meaning simply classes, not sections as defined for Ontario) in two majority schools: Académie Notre-Dame-du-Labrador (primary) and Labrador City Collegiate (secondary). This means that the 1986 enrolment in homogeneous schools shown in Table II-48 is 0% of the French mother tongue population and the enrolment eligible under paragraph 23(1)(a).

Table II-47

Public schools providing instruction to the minority, Newfoundland, 1986

Schools*	Enrolment (grades 1-10)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
2	68	267	25.5	1 117	6.1

Sources:

* Newfoundland Department of Education. *Enrolment 1986-87* and Council of Ministers of Education. *Report on French and English Language Education in Minority Settings*, 1989.

** See Table II-5.

Table II-48

Homogeneous public schools, Newfoundland, 1986

Homogeneous schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
0	0	267	0	1 117	0

Sources:

* Newfoundland Department of Education. *Enrolment, 1986-87*.

** See Table II-5.

The progress represented by the opening of a homogeneous French school in Mainland suggests that the difficult position of the Francophone minority is slowly improving. In 1989 the Mainland population inaugurated the Saint-Anne school and community centre for pupils from kindergarten to grade four, with an enrolment of 60 pupils, 47 of them in grades one through four. The school, administered by the Port-au-Port Anglophone Catholic School Board, was the subject of numerous requests; in the end, 25% of construction funding was provided by the provincial Department of Education and 75% by the federal government. The Cap Saint-George immersion school is currently (1989) being transformed into a two-stream school with one French section and one immersion section.

Comparing enrolment in grades 1-12 for 1986-87 and 1988-89 enables evaluation of the progress made (Table II-49). In 1989, enrolment in minority programs of instruction had reached 230 pupils in five schools. This is an increase of 238%, but is still below what it would be if all French mother tongue (only mother tongue, or one of two) children were being educated in French, and far below the enrolment eligible under paragraph 23(1)(a) (1,117 children).

Table II-49

Comparison of enrolments and public schools, Newfoundland, 1986-87, 1988-89

	1986-87	1988-89	% Increase
Enrolment in schools providing instruction to the minority (grades 1-10, 1986-87 grades 1-12, 1988-89)	68	230	238
Nombre d'écoles	2	5	150
Effectifs dans des écoles homogènes	0	47	—
Number of schools	0	1	—

Source: Newfoundland Department of Education.

For the 1989-90 school year, Statistics Canada estimates the enrolment in grades 1-12 of schools offering programs of instruction to the Francophone minority to be 220 pupils, a decrease of 4.3% from 1988 enrolment and an increase of 223.5% over 1986 figures.

2. Description of school system

The Newfoundland and Labrador school system is quite different in a number of respects from those of the other Canadian provinces. The main difference is that it is entirely denominational and decentralized.

When Newfoundland joined Confederation in 1949, section 93 of the Constitution Act, 1867 was altered to some extent. The control of education was placed, as in the other Canadian provinces, in the hands of the province. However, section 17 of the Newfoundland Act enacts that:

... the Legislature shall have exclusive authority to make laws in relation to education, but the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools, common (amalgamated) schools, or denominational colleges, that any class or classes of persons have by law in Newfoundland at the date of Union, and out of public funds of the Province of Newfoundland, provided for education,

(a) all such schools shall receive their share of such funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature for all schools then being conducted under authority of the Legislature;

The effect of section 17 was to entrench the rights of the five religious denominations which made up the population at the time of the Union (1949): 33% Anglican Church, 31% Roman Catholic, 25% United Church, 7% Salvation Army and an unknown number of Seventh Day Adventists, who nevertheless had three schools. In 1954 a sixth religious denomination, the Pentecostal Assembly, was recognized.

The Schools Act currently recognizes four denominational groups: Roman Catholic, integrated (United Church, Anglican Church and Salvation Army), Pentecostal Assembly and Seventh Day Adventists. These groups operate a total of 33 school boards. Four school maps divide the province into 19 integrated districts, 12 Catholic districts, one Pentecostal Assembly district and one Seventh Day Adventist district.

The Newfoundland education system is governed by the Schools Act (1970) as amended (1983) and the Ministry of Education Act (1984). The Ministry of Education contains 6 divisions:

- teaching, responsible for questions related to developing programs of study for examinations, teaching material and libraries;
- administration and personnel;
- finances;
- services to schools;
- special services; and
- research and evaluation.

The school board remains the regional body which has the following powers and duties in matters of education:

- organizing primary and secondary instruction;
- providing and maintaining schools;
- appointing and discharging teachers;
- supervising vehicle condition if school transportation is organized or entering into agreements with other school boards;
- imposing taxes with the approval of the Minister;
- hiring personnel qualified for the services offered; and
- promoting enrichment of the program of study.

A school board has between 7 and 15 members, two-thirds of them (since 1984) elected and one-third appointed by the Minister of Education. The term of office is four years.

A school board may set up a school committee. Section 22 of the Ministry of Education Act designates the potential functions of these committees as:

- overseeing building maintenance;
- making recommendations regarding new equipment;

- providing liaison between the school board and the community; and
- performing any other tasks allocated by the school board.

The Newfoundland Francophone minority must work through the parents' committees in making recommendations to Anglophone school boards, even if the committees have no status in law.

This is in fact the procedure that has been followed in making requests, e.g. the procedure followed by the St. John's parents' committee to request French classes. An enrolment of 19 was deemed insufficient by the St. John's Catholic School Board on the pretext that the ongoing review of the Schools Act would require 23 pupils. On the subject of management, the parents' committee said:

Aware of the problems and abuses that can occur when an Anglophone administration manages a French program of instruction, the parents requested some governance rights to ensure the smooth operation of the school project. [trans.] (Clair, 1988)

Without defining the aspects of management in detail, the parents' committee suggested that policy aspects of management be delegated to the school board, with the more technical aspects of the French program to be handled by the parents. In the words of Mr. Clair:

The Board's reply was that, in Newfoundland, only the churches have the right to manage education programs. The role of parents is limited, and there is no place for them on the school boards.

The Board then suggested that the parents appoint an advisory committee which could communicate with the Board executive on a regular basis. The advisory board would have no management rights, but would be kept up-to-date on any development in the French program. [trans.] (1988)

The St. John's parents' committee agreed to this proposal, while promising themselves that they would claim their right under section 23 of the Charter. In August 1988 they filed their petition with the Newfoundland Supreme Court.

If management is difficult to obtain, right to instruction is not yet entrenched in education legislation, as the 1970 Schools Act is silent on the subject. The Act is currently being redrafted, with the intention of recognizing the right to instruction in the language of the minority, in homogeneous facilities where numbers warrant. The redrafting is the result of a statement of principle issued in 1982 and a 1984 position paper. In *Aims of Education*, the Minister of Education's objective No. 15 is given as:

to ensure that both English language and French language pupils are provided with the opportunity to study in their own language where numbers warrant and also to study English or French as a second language. (1984)

The *Report of the Policy Advisory Committee on French Programs* submitted in December 1986 reiterates the position, while specifying that minority facilities should be established within existing school boards.

Although Newfoundland Francophones are obviously in a difficult position, they are not giving up. The following example illustrates their courage, and the formidable challenges and obstacles they face.

In September 1987, the Labrador School Board appointed an Anglophone as vice-principal responsible for the French section of Académie Notre-Dame-du-Labrador. The school board maintained that, in hiring personnel, the rules established under the collective agreement must be followed, i.e. preference must be given to school board employees qualified for the position. The school board did not think it necessary to require a knowledge of French for the position. A spokesperson for the parents commented:

... that we are gradually beginning to lose ground and that the rights acquired over the years, often with great difficulty, seem to be slowly fading under the constant pressure of the majority. "The committee's only power is the power to submit petitions to the school board". [trans.] (Angers, 1987)

C. SUMMARY

Historically the voice of the French official language minority has been relegated to a minor position within Newfoundland's denominational system of education. However since the advent of the Canadian Charter of Rights and Freedoms, the province has shown some interest in Francophone minority rights by issuing a statement of principle (1982), a committee report (1986) and by the recognition given to rights in the ongoing redrafting of the Schools Act.

On the subject of instruction as such, it emerges that, in 1986, the equivalent of 6.1% of school-age children eligible under paragraph 23(1)(a) were enrolled in programs delivering instruction to the minority. The 1986 total enrolment in the two programs available was 68 pupils. There was no homogeneous school in operation as yet. Also noted was the progress made between 1986-87 and 1988-89; during the two-year period, enrolment in minority programs jumped 238% (162 pupils) and one homogeneous school was established.

School management as such is not yet part of the picture in Newfoundland. Francophone parents must work through advisory committees to make recommendations or requests to majority school boards, which do not always do anything about them.

XII. NORTHWEST TERRITORIES AND YUKON

A. BACKGROUND

- 1659: The explorers Radisson and Des Groseilliers contact the natives of the Far North.
- 1867: The Grey Nuns have a boarding school built in Fort Providence. Until 1945, the schools are run by religious missions.
- 1965: The education system is placed under the responsibility of the councils of the territories and the Yukon and managed by ministers of education.
- 1983: Amendments to Northwest Territories education legislation permit management methods which promote local participation.
- 1984: Directive 7230 states that, where numbers warrant, the Yukon will deliver instruction in French to pupils so entitled under section 23 of the Canadian Charter of Rights and Freedoms.
- 1984: The Northwest Territories Official Languages Act (Bill 9-84(2)) recognizes English and French as official languages and gives them equal status. Application of the Act is delayed until 1990.
- 1990: The Northwest Territories Official Languages Act (Bill 9-84(2)) comes into force.

B. CURRENT CONTEXT

1. Statistics

The Northwest Territories and Yukon cover an enormous area measuring some 3,862,199 square kilometres, 38.8% of the total area of Canada. Because the two territories are located in the Far North, population density is very low; the 1986 population totalled 75,745 individuals. The rate of population increase is similar to that in the Western provinces of Canada: 9.9% since 1981 and 17.5% since 1976 (Table II-50).

Table II-50

Total French mother tongue population, Northwest Territories and Yukon, 1976, 1981, 1986

Total population		FMT	FMT/ total population (in %)
1976	64 445	1 620	2.5
1981	68 900	1 820	2.6
1986	75 745	2 040*	2.7
1986	75 745	2 240**	3.0

* Data adjusted by Statistics Canada for purposes of comparison with previous years.

** One mother tongue (French) and two mother tongues (English and French).

Source: Statistics Canada.

The French mother tongue population, mainly concentrated in Yellowknife, Iqaluit, Nanisivits, Whitehorse and Inuvik, accounts for 2.7%¹⁰⁸ of the total population of the territories. The proportion rose 0.2% between 1976 and 1986. If we compile the results for respondents who reported two mother tongues (French and English) and respondents who reported one mother tongue (French) in the 1986 census, the French mother tongue population climbs to 3.0% of the total population of the territories. This figure (2,240 individuals)¹⁰⁹ give a more accurate picture of the enrolment eligible under paragraph 23(1)(a) of the Canadian Charter of Rights and Freedoms, which does not require that only one mother tongue be reported.

Because the two territories are administered separately, a brief summary of demolinguistic characteristics is appropriate here. In 1986 the French mother tongue (adjusted data) population of the Yukon totalled 620 individuals, accounting for 2.6% of the total territory population of 23,500. The Northwest Territories population was somewhat larger: 2.7% (1,420 individuals) of the total population of 52,245 reported French as a mother tongue (adjusted data).

Because of differences between the school situations of the official language minorities in the Northwest Territories and Yukon, we will examine them separately.

In the Northwest Territories, under the terms of a 1977 Order in Council (amended in 1983), the choice of language of instruction in kindergarten through grade 2 is left to local authorities for the population of a school or part of a school managed by those authorities. The Minister of Education prescribes the language of instruction for the subsequent years. If that language is other than English, English as a second language is a required subject. If English is prescribed even though it is not the language of the majority in the school, the language of the majority becomes the second language. Anglophones are entitled to instruction in English and the local or territorial authorities must satisfy this population.

In 1986 in the Northwest Territories, although the French mother tongue population¹¹⁰ totalled 119 pupils, no program of instruction was offered. *The number of children 6-17 years of age eligible for instruction in the minority language under paragraph 23(1)(a) totalled 459*¹¹¹ (Table II-51). There were no homogeneous schools in 1986 (Table II-52) and none is planned for the near future.

Although the 1986-87 data indicate no educational service to the French-language minority, progress has been made since that time in the Northwest Territories. In 1988-89, three schools delivered instruction to the Francophone minority: two schools in Iqaluit and one school in Nanisivits offered instruction in grades 1-12. These non-homogeneous schools offered instruction in the language of the Francophone minority to a total of 43 pupils. In Yellowknife 30 Francophones in kindergarten through grade 11 attended immersion schools, but were given a special program in French.

The special Statistics Canada compilation (1988) enables it to be forecast that in 1992 the enrolment eligible under paragraph 23(1)(a) will total 519 children between the ages of 6 and 17, 13.0% more than in 1986. Education services for this population must be provided.

Table II-51

Public schools providing instruction to the minority, Northwest Territories, 1986

Schools*	Enrolment (grades 1-9)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
0	0	119	0	459	0

Sources:

* Council of Ministers of Education. *Report on French and English Language Education in minority settings*, 1989.

** See Table II-5.

Table II-52

Homogeneous public schools, Northwest Territories, 1986

Homogeneous schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
0	0	119	0	459	0

Sources:

* Northwest Territories Department of Education.

** See Table II-5.

In the Yukon the choice of language of instruction is made by three superintendents on behalf of the Minister of Education. An effort is made to provide accommodation and transportation for French-language minority pupils eligible under section 23 who live in areas far from Whitehorse.

In 1986 according to the Yukon Department of Education, two Whitehorse schools delivered instruction to 36 Francophone minority pupils in grades one through nine (Whitehorse Elementary School and J.A. Jeckell Junior High School). *This enrolment is the equivalent of 73.5% of French mother tongue school-age (6-17 years) children¹¹² a total of 49 children, but only the equivalent of 16.7% of the 215¹¹³ children eligible under paragraph 23(1)(a) (Table II-53).* These figures also indicate a high rate of assimilation, as only the equivalent of 22.7% of children learn French as a mother tongue from one or both parents.

Progress has been made since 1986. Although there were no homogeneous schools in 1986 (Table II-54), in 1988-89 one is underway in Whitehorse. A total of 55 pupils now receive instruction in premises belonging to three schools (Anglophone and immersion); unified administration for these 55 pupils is already a reality, and the pupils will soon be housed together in the first homogeneous French school in the Yukon, l'Ecole Emilie-Tremblay. In terms of present enrolment, the school is twenty-first in size of the 26 schools on the territory. Since five Anglophone schools have smaller enrolments, it may be assumed that the Department is in favour of maintaining schools in smaller communities.

According to a statistical forecast for 1992, the Yukon population of children eligible under paragraph 23(1)(a) could climb to 258 children, an increase of 20.0% from 1986.

Table II-53

Public schools providing instruction to the minority, Yukon, 1986

Schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
2	36	49	73.5	215	16.7

Sources:

* Yukon Department of Education and Council of Ministers of Education. *Report on French and English Language Education in minority settings*, 1989.

** See Table II-5.

Table II-54

Homogeneous public schools, Yukon, 1986

Homogeneous schools*	Enrolment (grades 1-12)*	Minority population (6-17 years)**	Enrolment FMT (in %)**	Eligible enrolment**	Enrolment EC (in %)**
0	0	49	0	215	0

Sources:

* Yukon Department of Education.

** See Table II-5.

2. Description of school system

In general, the school system in the Canadian Far North is centralized but does allow for some local autonomy, especially in the Northwest Territories. The Northwest Territories Department of Education acts as an agency which offers services, establishes guidelines and supervises four types of relatively autonomous school management bodies. Denominational rights are recognized.

At local and regional levels (often the same thing), four types of school management exist. The two Yellowknife school boards (Catholic and public) are responsible for all the education under their jurisdiction and perform the traditional tasks and duties of a school board (e.g. engaging teachers, preparing the budget, imposing taxes). Board members are elected.

The three division councils for the areas surrounding Coppermine, Iqaluit and Baker Lake are responsible for education in a vast area. The members of these councils are elected from among the members of 21 local boards. They perform the same tasks as the school boards, with the exception of teacher remuneration which is the responsibility of the Department of Education.

The Education Society is a third type of administrative body. The societies, seven in number, are incorporated bodies made up of seven members elected from the local population. They are responsible for school operation. They do not engage teachers, but oversee local maintenance and repair.

The most common type of administrative body is the education committee, of which there are 22. Members are elected by the community and their duties are to advise and consult the four Department of Education superintendents.

The Northwest Territories education management system is based on a vast local network of consultation and/or partial decisions. Only two school boards have full powers over education in their jurisdictions. Elsewhere the Department of Education has partial administrative authority over local education.

In the Yukon the system is centralized. There are as yet no school boards, and the Department currently manages education for the entire territory. Twenty-six school committees, some Catholic (two in Whitehorse) and the others public (10 in Whitehorse and 14 elsewhere in the territory) are made up of members elected on a proportional basis from among the parents of the 26 schools. The committees have the authority to make recommendations to the Minister. Review of the existing education legislation is currently being considered, with a view to introducing a school board system.

The Department of Education has established a service for the teaching of French (mother tongue, second language and immersion).

The Francophones in the Northwest Territories and Yukon, although they are few in number and widely dispersed, are making significant progress. The existing management system, especially in the Northwest Territories, could be developed to provide effective management of a homogeneous school. The Perrault Report (1988) recommends:

that the government of the Northwest Territories set up a French school system. The system would be governed by an autonomous school board. It must offer

instruction from kindergarten through secondary school. The French program must be delivered by qualified Francophone teachers well equipped with French-language teaching materials;

that the territorial government establish a Francophone division in the Department of Education, thus centralizing the services and resources of Francophone experts;

that in the short term the government of the Territories significantly increase the quantity of French-language books and teaching material in school and municipal libraries, and in the medium term (two to three years) provide public funding to an autonomous network of French-language libraries. (1988, p. 71) [trans.]

C. SUMMARY

Historically, the official language minorities of the Northwest Territories and Yukon are beginning to gain recognition of their constitutional rights. Instruction services are not yet offered as a matter of course. In the Yukon in 1986, the equivalent of 16.7% of the children eligible under paragraph 23(1)(a) were enrolled in a minority program. According to a special Statistics Canada compilation, there were 215 such children. In the Northwest Territories in the same year, out of the 459 children eligible for enrolment under paragraph 23(1)(a), not a single one was receiving instruction in the language of the minority. However, progress has begun.

No school management model for the minority has yet been proposed. However, the various existing school structures could be adapted to enable the minority to make decisions on relevant education services.

Notes

- 1 An explanation of the terms used. "Official language minorities" refers to the two official language minorities in Canada, one English-language, the other French-language. With regard to section 23, the word "language" refers to the mother tongue defined as the first language learned and still understood. No distinction is made between the terms "French-language" and "Francophone". The "French-language or Francophone minority" is a generic term used to describe the minority as a whole. However, when we wish to emphasize the heterogeneity of provincial and territorial situations with respect to the French-language minority, we use the expressions "the French-language minorities" or "the Francophone minorities". No distinction is made between the terms "English-speaking" and "Anglophone" as they apply to the official language minority in Quebec.
- 2 The criterion is to be a parent and have as the first language learned and still understood that of the English- or French-language minority population in the province in which the parent resides.
- 3 We do not present a model of the evolution of Francophone minority education in Canada. We simply point out that the three determining factors in this evolution have been experienced to varying degrees by virtually all the French-language minorities.
- 4 Chapter IV provides an historical, descriptive and analytical study of these models.
- 5 The distinction was made for the first time in 1984.
- 6 See Chapter I.
- 7 For further details, see this chapter's section on Quebec.
- 8 If the question were brought before the courts, we believe that they would recognize the section 23 rights of *every* individual who reports a minority mother tongue, whether that mother tongue is that person's only mother tongue, or one of two or even three.
- 9 The word "potentially" is used inasmuch as paragraph 23(1)(a) is not in force in Quebec. See section on Quebec.
- 10 The scale was initially established hypothetically for a clustering around specific percentages of the minority population as the ratio of the majority population. For example, the difference between 35% (New Brunswick) and 11.2% (Quebec) demands two separate categories. The same is true for the difference between 5.8% (Ontario) and 11.2%, and for the difference between 3.0% (Northwest Territories/Yukon) and 4.5% (Nova Scotia). Examination of the relative size of each official language minority subsequently confirmed the soundness of the categories.
- 11 Section 16.2 of the Canadian Charter of Rights and Freedoms states: "English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick".
- 12 In the same year, for the Anglophone provinces and territories as a whole, school enrolment represented 19.3% of the population of the provinces and territories, whereas school enrolment of the Francophone minority represented 16.0% of the Francophone minority population.
- 13 Most of our data are derived from 1986, the year of the most recent Statistics Canada census. However, we do report on the progress made between 1986 and 1990 in subsequent sections of the chapter dealing with the situation in each province and territory.
- 14 This specific methodology is based on the letter of section 23 which, by specifying "out of public funds", means providing instruction to official language minorities within a public education system. Private schools are therefore excluded since, by their very definition, they are not fully funded by the state. The restriction has greater impact on the data describing the Anglophone minority in Quebec than on those describing the

Francophone minorities. There is in Quebec a major system of English-language private schools which are up to 80% publicly funded. To be admitted, a pupil must meet the same eligibility criteria as for English schools in the school board system. For all practical purposes, Quebec's publicly funded private schools are no different from the public schools. However, our cautious methodological approach requires that they be excluded. For a more in-depth analysis of the question, see the section on Quebec, this chapter.

- 15 Generally speaking, the data provided by the ministries of education, the Council of Ministers of Education and Statistics Canada agree. When there was a disparity, we calculated the enrolment with the help of the ministries of education to find the source of the discrepancy. For example, we discovered a difference of 1,133 pupils between the New Brunswick Ministry of Education data and those of Statistics Canada, and a difference of 1,260 pupils between the provincial data and those of the Council of Ministers of Education. We checked the schools and groups of pupils included or excluded in each compilation to obtain the data confirmed by the Ministry of Education.
- 16 This may be justified by the fact that, in the 1986 census, the five-year old Quebec population (94,665) was approximately equal to the 17-year old population (93,245) (Catalogue 93-101, Table 4).
- 17 In most provinces and territories, this age is between 6 and 16 years.
- 18 Because of these two factors and to clearly indicate that 6- to 17-year old children whose mother tongue is that of the minority (variable *c*) are not the only children enrolled in minority programs (variable *b*), the word "equivalent" is used in describing the situation.
- 19 See the section on Quebec, this chapter.
- 20 Because enrolment in minority programs of instruction (variable *b*) exceeds the number of children eligible under paragraph 23(1)(a) actually enrolled, the word "equivalent" is used in our descriptions.
- 21 The Supreme Court of Canada has given its opinion on the question in its decision on *Mahé et al.* For further details, see Foreword.
- 22 The services provided to the minority appear more extensive than they actually are because, if we had excluded from the enrolment all children whose mother tongue is not that of the minority for variable *c* or who are ineligible under paragraph 23(1)(a) for variable *e*, the enrolment would have been smaller.
- 23 As explained earlier, all respondents reporting a minority mother tongue could have been included (one, two or three mother tongues). Using the more restrictive option (respondents reporting only one mother tongue) would probably contravene both the spirit and the letter of section 23.
- 24 In this province, the mother tongue of the minority school enrolment is French since the admission criteria require an oral examination in French. New Brunswick confirms the soundness of our methodology because the two variables are virtually identical.
- 25 On the scale established earlier, the intermediate designation signifies between 1% and 3% of the minority mother tongue population (French or English, French and English) compared to the total population of the province; the "small" category covers the range between 0% and 1%.
- 26 See section on Quebec for further details. See also this section for import of the private sector which serves the Anglophone minority and its impact on data related to ratio between enrolment and number of English mother tongue children (column *d*).
- 27 See Chapter I for a description of the jurisprudence on interpreting the expression "minority language facilities".
- 28 The qualifications are as follows. Our data are methodologically cautious and conservative. Section 23 of the Charter created a new situation, which is still evolving. The demand for official language minority education services may exceed the actual offer of these services. The parents eligible for rights under section 23 of the Charter may, because they have freedom of choice, opt to have their children educated in programs designed for majority language children.

- 29 In this case the two groups contemplated (minority mother tongue children and children of minority mother tongue parents) almost completely coincide. However this is not the case for a minority language child of a father or mother who does not have that minority language as mother tongue. In all other cases, the main reason is assimilation into the majority. The province provides a sound indication of a realistic level of demand for services compared to total eligible enrolment (i.e. 80%).
- 30 The methodology described for column *e* of Table II-5 was also used here, except for the definition of mother tongue.
- 31 See description for individual provinces and territories, this chapter.
- 32 The boards operate according to the laws and regulations of the individual provinces. Generally speaking, their role entails:
 - providing a complete range of education services;
 - hiring and assigning staff qualified to provide those services;
 - building, funding or allocating adequate school facilities; and
 - distributing provincial and federal grants.
- 33 Quebec is the only province in which, since 1971, parent committees are obligatory in schools. Furthermore, under Bill 107 (adopted in 1988), parent committees are to be replaced by orientation committees. (For more details see Chapter IV). The other provincial governments leave the establishment of parent committees to the discretion of the school boards, or have no policy on the matter.
- 34 For a complete definition of these categories, see Chapter IV.
- 35 Data adjusted by Statistics Canada for purposes of comparison with previous years.
- 36 Of these, 12,685 respondents reported two mother tongues (French and English). An additional 3,325 respondents reported “French and other” or “French, English and other”. This brings to 54,250 the number of respondents reporting French as the sole mother tongue, or one of two or three. For further details on terminology, see Overview, this chapter.
- 37 The term “intermediate” refers to provinces and territories in which the minority mother tongue population is between 1% and 3% of the total population.
- 38 French as only mother tongue or one of two or three.
- 39 See Overview for details on analysis methodology.
- 40 However, if all respondents reporting French as a mother tongue (French only, or one of two or three) are counted, the number of eligible children climbs to 15,484. In addition 12,627 eligible children had one parent reporting French as his or her only mother tongue.
- 41 The expression “minority language educational facilities provided out of public funds” is of particular concern to these schools. See Chapter I for further details.
- 42 Data adjusted by Statistics Canada for purposes of comparison with previous years.
- 43 14,150 respondents reported two mother tongues (French and English). Furthermore, in the 1986 Census, 2,360 respondents reported “French and other” or “French, English and other” as mother tongue. This brings to 64,575 the number of respondents reporting French as a mother tongue, (only mother tongue, one of two or three). For further details on terminology, see Overview, this chapter.
- 44 The term “intermediate” refers to the provinces and territories in which the minority mother tongue population ranges between 1% and 3% of total population.
- 45 Respondents reporting one mother tongue (French) and two mother tongues (French and English).

- 46 See Overview for further details on analysis methodology.
- 47 However, if all respondents reporting French as a mother tongue (only mother tongue, or one of two or three) are counted, the number of eligible children climbs to 21,712 children. 17,800 eligible children had one parent reporting French as his or her only mother tongue.
- 48 Paragraph 23(3)(b) is of particular concern to these schools because it defines the expression “minority language educational facilities provided out of public funds”. See Chapter I for further details.
- 49 See analysis in section on contractual models, Chapter IV.
- 50 Data adjusted by Statistics Canada for purposes of comparison with previous years.
- 51 5,190 respondents reported two mother tongues (French and English). In addition, in the 1986 census, 690 respondents reported “French and other” or “French, English and other” as mother tongue, bringing to 26,590 the number of respondents reporting French as only mother tongue, or one of two or three. For further details on terminology, see Overview, this chapter.
- 52 The term “intermediate” refers to provinces and territories in which the minority mother tongue population ranges between 1% and 3% of total population.
- 53 French reported as only mother tongue or one of two (French and English).
- 54 See Overview, this chapter, for details on analysis methodology.
- 55 However, if we count all respondents reporting French as only mother tongue or one of two or three, the eligible enrolment is 10,908 children. In addition, 9,351 eligible children have one parent whose only mother tongue is French.
- 56 The expression “minority language educational facilities provided out of public funds” is of particular concern to these schools. See Chapter I for further details.
- 57 See analysis in Chapter V, section on contractual models.
- 58 See section on models paralleling the majority structure (Chapter IV) for more detailed description.
- 59 Data adjusted by Statistics Canada for purposes of comparison with previous years.
- 60 10,190 respondents reported two mother tongues (French and English). Again in the 1986 census, 1,250 respondents reported “French and other”, or “French, English and other”. This brings to 57,835 the number of respondents who reported French as only mother tongue, or one of two or three. For further details on terminology, see Overview, this chapter.
- 61 The term “significant” is used to define a minority language population ranging between 4% and 10% of total provincial population.
- 62 French reported as only mother tongue or one of one, two or three.
- 63 However, if the results for all respondents who reported French as only mother tongue or one of two or three are included, the enrolment is 18,027 children. Furthermore 15,182 eligible children have one parent whose only mother tongue is French.
- 64 See Overview, this chapter, for further details on analysis methodology.
- 65 The expression “minority language educational facilities provided out of public funds” in paragraph 23(3)(b) is of particular concern for these schools. See Chapter I for further details.

- 66 See analysis in the section on models paralleling majority structure in Chapter IV.
- 67 Data adjusted by Statistics Canada for purposes of comparison with previous years.
- 68 104,550 respondents reported two mother tongues (French and English). Furthermore, in the 1986 census 14,455 respondents reported “French and other” or “French, English and other” as their mother tongue. This brings to 543,825 the number of respondents who reported French as only mother tongue or one of two or three. For further details on terminology, see Overview, this chapter.
- 69 See Overview, this chapter, for details on analysis methodology.
- 70 One mother tongue (French) and two mother tongues (French and English) reported.
- 71 However, if all respondents reporting French as only mother tongue or one of two or three are included, the figure climbs to 138,328 children. Furthermore, 114,883 eligible children had one parent who reported French as only mother tongue.
- 72 The paragraph 23(1)(b) expression “minority language educational facilities provided out of public funds” is of particular concern to these schools. See Chapter I for further details.
- 73 Data adjusted by Statistics Canada for purposes of comparison with previous years.
- 74 150,730 respondents reported two mother tongues (French and English). Again in the 1986 census, 59,225 respondents reported “English and other” or “French, English and other” as mother tongue. This brings to 789,985 the number of respondents who reported English as only mother tongue, or one of two or three. For more details on terminology, see Overview, this chapter.
- 75 The Supreme Court judgment is explicit in this regard: “The framers of the Constitution unquestionably intended by s. 23 to establish a general regime for the language of instruction, not a special regime for Quebec; but in view of the period when the *Charter* was enacted, and especially in light of the wording of s. 23 of the *Charter* as compared with ss. 72 and 73 of *Bill 101*, it is apparent that the combined effect of the latter two sections seemed to the drafters like an archetype of the regimes needing reform, or which at least had to be affected, and the remedy prescribed for all of Canada by s. 23 of the *Charter* was in large part a response to these sections” (p. 15). As a result of this decision, the “Quebec clause” which the Court believed required changing, was replaced by the “Canada clause”. The significance of the latter is that the instruction received by the father, mother, brother or sister is extended to all of Canada, and is not restricted to Quebec.
- 76 Private schools are discussed later in this section.
- 77 Ontario grade 13 figures are also excluded.
- 78 This is justified by the fact that, in the 1986 census, the Quebec population five years of age was approximately equal to the Quebec population 17 years of age (94,665 and 93,245) (Catalogue 93-101, Table 4). See Overview, this chapter, for further details on analysis methodology.
- 79 English reported as only mother tongue or one of two (French and English).
- 80 French only mother tongue for data prepared by the Quebec Ministry of Education.
- 81 However, if all parents who reported English as only mother tongue or one of two or three are counted, the enrolment climbs to 130,615. Furthermore, 98,555 eligible children had one parent whose only mother tongue was English.
- 82 In Canada, a single Francophone public school, the Collège Mathieu in Gravelbourg, receives 50% of the funding given to public schools. Ontario has four private Francophone schools, which receive no support whatever from the province’s Ministry of Education.

- 83 The paragraph 23(3)(b) expression “educational facilities provided out of public funds” is of particular concern to these schools. See Chapter I for further details.
- 84 Data adjusted by Statistics Canada for purposes of comparison with previous years.
- 85 23,050 respondents reported two mother tongues (French and English). Furthermore, in the 1986 census, 275 persons reported “French and other” or “French, English and other” as mother tongue. This brings to 248,705 the number of respondents reporting French as a mother tongue (only mother tongue, one of two or three). For further details on terminology, see Overview, this chapter.
- 86 No private Francophone schools are currently operated in New Brunswick.
- 87 Respondents reporting one mother tongue (French) and two mother tongues (French and English). See Overview, this chapter, for further details on analysis methodology.
- 88 However, if all respondents reporting French as a mother tongue (only mother tongue, or one of two or three) are counted, the number of eligible children climbs to 57,398. 52,686 eligible children have one parent reporting French as his or her only mother tongue.
- 89 Paragraph 23(1)(b) is of particular concern to these schools because it defines the expression “minority language educational facilities provided out of public funds”. See Chapter I for further details.
- 90 Data adjusted by Statistics Canada for purposes of comparison with previous years.
- 91 1,340 respondents reported two mother tongues (French and English). Furthermore, in the 1986 census, 20 respondents reported “French and other” or “French, English and other” as mother tongue. This brings to 6,520 the number of respondents reporting French as a mother tongue (only mother tongue, one of two or three). For further details on terminology, see Overview, this chapter.
- 92 Paragraph 23(1)(b) is of particular concern to these schools because it defines the expression “minority language educational facilities provided out of public funds”. See Chapter 1 for further details.
- 93 Respondents reporting one mother tongue (French) and two mother tongues (French and English). See Overview, this chapter, for further details on analysis methodology.
- 94 No respondent reporting “French and other” or “French, English and other” as a mother tongue reported any children. 1,947 eligible children had one parent whose only mother tongue was French.
- 95 Data adjusted by Statistics Canada for purposes of comparison with previous years.
- 96 8,490 respondents reported two mother tongues (French and English). Furthermore, in the 1986 census, 270 persons reported “French and other” or “French, English and other” as mother tongue. This brings to 39,620 the number of respondents reporting French as a mother tongue (only mother tongue, one of two or three). For further details on terminology, see Overview, this chapter.
- 97 The term “significant” refers to the provinces and territories in which the minority mother tongue population ranges between 4% and 10% of total population.
- 98 In 1986 Nova Scotia had no French-language private schools serving the minority.
- 99 Respondents reporting one mother tongue (French) and two mother tongues (French and English). See Overview, this chapter, for further details on analysis methodology.
- 100 However, if all respondents reporting French as a mother tongue (only mother tongue, or one of two or three) are counted, the number of eligible children climbs to 10,631. 8,517 eligible children had one parent reporting French as his or her only mother tongue.
- 101 Paragraph 23(1)(b) is of particular concern to these schools because it defines the expression “minority language educational facilities provided out of public funds”. See Chapter 1 for further details.

- 102 Data adjusted by Statistics Canada for purposes of comparisons with previous years.
- 103 1,120 respondents reported two mother tongues (French and English). Furthermore, in the 1986 census 75 respondents reported “French and other” or “French, English and other” as mother tongue. This brings to 3,190 the number of respondents reporting French as a mother tongue (only mother tongue, one of two or three). For further details on terminology, see Overview, this chapter.
- 104 In 1986 there were no private schools serving the French-language minority in Newfoundland.
- 105 Respondents reporting one mother tongue (French) and two mother tongues (French and English). See Overview, this chapter, for further details on analysis methodology.
- 106 If all respondents reporting French as a mother tongue (only mother tongue, or one of two or three) are counted, the number of eligible children climbs to 1,140. 856 eligible children had one parent reporting French as his or her only mother tongue.
- 107 Paragraph 23(1)(b) is of particular concern to these schools because it defines the expression “minority language educational facilities provided out of public funds”. See Chapter 1 for further details.
- 108 Data adjusted by Statistics Canada for purposes of comparison with previous years.
- 109 310 respondents reported two mother tongues (French and English). Furthermore, in the 1986 census, 40 respondents reported “French and other” or “French, English and other” as mother tongue. This brings to 2,280 the number of respondents reporting French as a mother tongue (only mother tongue, one of two or three). For further details on terminology, see Overview, this chapter.
- 110 Respondents reporting one mother tongue (French) and two mother tongues (French and English). See Overview, this chapter, for further details on analysis methodology.
- 111 If all respondents reporting French as a mother tongue (only mother tongue, or one of two or three) are counted, the number of eligible children climbs to 485. Furthermore 400 eligible children had one parent reporting French as his or her only mother tongue.
- 112 Respondents reporting one mother tongue (French) and two mother tongues (French and English).
- 113 If all respondents reporting French as a mother tongue (only mother tongue, or one of two or three) are counted, the number of eligible children climbs to 218. 184 eligible children had one parent reporting French as his or her only mother tongue.

CHAPTER III

From instruction to school management in a minority setting: the issue and its components

CHAPTER III

FROM INSTRUCTION TO SCHOOL MANAGEMENT IN A MINORITY SETTING: THE ISSUE AND ITS COMPONENTS

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V. SUMMARY

Following our discussion of the rights conferred by section 23 of the Canadian Charter of Rights and Freedoms (1982) and the interpretations of these rights by the courts (Chapter I), and a description of the state of official language minority education in each province and territory of Canada (Chapter II), we now approach the question of instruction and school management from the perspective of principles: those that form the basis of minority demands and those which should guide the planning of models to implement the conferred rights.

The first part of this chapter deals with the issues surrounding instruction for minorities and the management of educational services by the minority. In the second part, to better define the concept of “management”, we describe its components as they appear in contemporary management systems used by majority groups. In the third part, we provide a theoretical framework for analysis of school management, identifying the ideal content and the principles determining control for and by official language minority groups.

I. THE ISSUE OF INSTRUCTION AND SCHOOL MANAGEMENT BY OFFICIAL LANGUAGE MINORITY GROUPS

Minority group claims, formulated in accordance with the guarantees of section 23 in the Charter, involve a specific definition of minority community life, of the psychological identity of minority children and of the role of the school. The resultant point of view differs from that of members of the majority group. The personal identity of the majority group coincides with the identity constantly presented in public life. It is, therefore, the point of view of the minority group which we are trying to draw out here.

Before describing the motives that lead minorities to demand their rights to instruction and school management, we should point out that not all the majority groups with which they must deal are identical. This fact was established by a survey conducted in 1985 by the firm Canadian Facts for the Office of the Commissioner of Official Languages. The survey examined the opinions of the English-speaking majority (in primarily English-speaking regions) and of the French-speaking majority (in Quebec) on the right of official language minorities to instruction for their children in their own language. The results are shown in Table III-1.

In 1985, 57% of the respondents from British Columbia believed that Francophones should have the right to have their children taught in French. This opinion was shared by 68% of respondents from Ontario, 72% from the Prairie Provinces, and 76% from the Atlantic Provinces. In Quebec, 88% of the Francophone majority believed that the Anglophone minority should have the right to have its children taught in English.

These statistics reveal that minority demands for instruction in the minority language should bear fruit more rapidly, for example, in the Atlantic Provinces than in British Columbia. If a large proportion of the population rejects the rights of the official language minority to receive instruction in its own language, as in British Columbia, it also follows that it will even more strongly reject the minority's right to manage educational services.

Table III-1

Services in the minority language

	Predominantly Anglophone regions (PAR), Quebec, Canada						
	Atlantic	Ontario	Prairies	B.C.	Total: PAR	Quebec	Canada
Respondents believing that the official language minority should have the right to have its children taught in its language (%)	76	68	72	57	69	88	74

Source: Commissioner of Official Languages, *Language and Society*, No. 19.

We now deal with the first topic in this chapter: the issue of instruction and school management by official language minority groups. We have divided the topic into four sections: a) the reasons behind demands for instruction and school management; b) an operational definition of the term “management”; c) a description of the objectives to be attained by control of school management; and d) demystification of the fears frequently expressed by majorities and minorities on the subject of school management.

A. REASONS UNDERLYING DEMANDS FOR INSTRUCTION AND SCHOOL MANAGEMENT

Two primary reasons impel official language minorities to demand the rights found in the Canadian Charter of Rights and Freedoms: (1) cultivation of minority language and culture to ensure the survival and perpetuation of a linguistic group and so modify an historically disadvantageous situation; and (2) acquisition of the means of action for directing its own vitality and growth. The first reason has to do with both instruction and school management; the second essentially concerns school management.

1. Cultivation of the minority language and culture through modification of an historically and currently disadvantageous situation

The most unanimous and generally cited reason in minority claims has to do with the constitutional objective of section 23: the vitality of minority language and culture. This vitality is a function of geographic, demographic and political factors, both current and historical. It takes different forms in each province and territory. We give only the general

outline here. Readers must apply it to the individual provincial or territorial situations described in Chapter II.

By "vitality" we understand, following Dumont (1979), the daily transmission and transformation of ways of life, ways of thinking and ways of speaking in the family and in the local and regional context. The expression "linguistic and cultural vitality" means two aspects. The first is the transmission of a cultural heritage, whether culture as understanding or culture as difference (two basic definitions given to the word "culture" in the introduction to this study). More concretely, it corresponds to the act of instruction. The second aspect is the dynamic dimension of the word: the cultural knowledge bequeathed and transmitted as understanding and difference is received in new conditions and transformed to conform to daily life in a new context. This second aspect is not unrelated to the definition of culture as difference, but is most closely tied to the definition of culture as decision-making in everyday life. It corresponds to the act of management.

Since the homogeneous school is the principal place of instruction and management in the minority language, it is clear that it plays a very major role in cultural and linguistic vitality. In this context, "homogeneous school" means an autonomous school with enrolment meeting the criteria of section 23. A homogeneous school may also, however, serve a clientele that is not eligible under section 23 but which, nonetheless, belongs to the minority language. Such a clientele would include, for example, immigrants from Francophone countries.

To begin with, in a society where the culture and language of the majority readily gain access to homes through the media of television, radio, video cassettes and print, schools are expected to play a major role in the vitality of minority communities. They support, extend and sometimes even replace the home.

Moreover, schools constitute a reserve of cultural wealth for the minority, which, depending on its particular context, may have access to no other resources. Schools have the multimedia material resources which permit them to act as distribution centres for the cultural and linguistic treasures of the minority. School libraries and media centres supply children, and also parents, with books, videos, cassette tapes, diskettes, etc. to bring to the home.

On an individual level, the homogeneous school contributes to the social identity of the child. This identity will be the same as the parents' identity to the extent that the school shares the language of the parents. In practice, transmission of the minority language and culture takes place more effectively when school and home promote the same values, the same understanding, and the same world-view.

In social terms, the homogeneous school can sometimes become the very heart of the community. This can be seen most dramatically in regions where the school has just been granted official status as a community school for the minority. The community then displays pride and dynamism which attest to the rallying quality of the school.

Fishman (1980), in studying conditions which encourage the growth and development of minority groups, stressed the need for milieux and situations in which the minorities are completely apart from majority influence. The homogeneous school for the minority is often the only place where the young people of the minority find themselves together, the only place where their membership in a minority group is consolidated.

Although the homogeneous school is important for the minority community, its role is not exclusive: therein lies its limit. Joshua Fishman concludes:

The school will have its role to play in the overall language maintenance design but it will do so by serving a vibrant and purposeful community — one with a modicum of economic and religious power of its own — rather than being called upon to do the impossible: to save the community from itself. (1980, p. 171)

In the same vein, Landry and Allard remark:

In a minority linguistic community, the role of school and family will be to act as “counterweights” in trying to provide some equilibrium in the frequency and intensity of linguistic contacts. Education in the mother tongue and the exclusive use of the mother tongue at home should offset the excess of second-language contacts and counteract the reductive effect of a situation of weak linguistic vitality at the community level. (1987, p. 77) [trans.]

The minority culture also flourishes in another place contiguous with the homogeneous school: wherever the management function of this school is exercised. School management allows for the transmission and transformation of culture as difference, as Judge Kerans observes. Kerans explains in a judgment of the Alberta Court of Appeal in *Mahé et al.*, [1985]:

I accept the argument of the appellants that the most effective guarantee to prevent assimilation is a facility under the exclusive control of that group. Any diminution in that power inevitably dilutes the uniqueness of the school and opens it to the influence of an insensitive if not hostile majority. No doubt some elements of control must be yielded, as we will see, but each measure of control lost represents a potential weakening of the decision-making power, and opens the door to the undermining of the difficult role of the facility. (p. 36)

A management structure in which minorities can take decisions and wield influence is essential to the vitality of their language and culture. By taking necessary decisions, minority groups develop a pattern of day-to-day interpretation: they are formed and transformed.

Perception of a deficiency awakens in minority groups the wish to ensure the vitality of their language and culture. Their demands for instruction and school management are justified by the absence of favourable conditions: by what was called "a situation requiring reform" by the Supreme Court of Canada (1984). As we have seen¹, this contemporary and historical situation was the target even when section 23 of the Charter was being drafted.

2. Acquisition of means to allow the minority to flourish under its own momentum

Apart from the vitality of their language and culture, the demands of minorities are motivated by another consideration touching more precisely on the question of school management: that of acquiring autonomous means of action rather than remaining subject, or in a state of constant reaction, to the decisions of local authorities of the majority group. One example appears in the testimony of a New Brunswick parent to the Court of Queen's Bench in the case *Mahé et al.*, [1985]. He explains that before the advent of language-based or minority school boards in that province, it was the opinion of parents that majority language school boards did not understand the philosophy behind minority language schools. By giving the minority the means to take decisions about its education, the new management system sorted out these difficulties and harmonized relations between Francophones and Anglophones, establishing a better and more lasting social climate. A new state of linguistic peace was thus established, and both Anglophone and Francophone parents were able to devote their energies to the education of their children without spending their time reacting to decisions taken elsewhere².

Because of the difficulties it faces in reacting to the decisions of majority school boards and of the energy that is wasted, the minority claims that it requires autonomous management to meet the needs of its children. A realistic management structure allows the minority to take the energy spent on decisions taken elsewhere and invest it in creating viable conditions for education. This is a principle aimed at saving time and energy.

Members of the majority group, moreover, without having any ill-will, may well question the validity or the choice of membership in a minority group. It is normal for the majority to deal with the needs of minorities in a fragmented way, decision by decision, without any underlying philosophy. In education, questions are thus asked in order of priority: allocating sufficient funds, establishing and maintaining schools, hiring competent staff. This situation leads to the supposition that, effectively, only the minority is competent to manage its own education.

The intrinsic motives for official language minority demands are closely linked to the minority's desire to flourish as a community and to acquire the means to do so. These motives provide a backdrop for school management objectives. Before dealing with this question, we must define the term "management", so as to be better able to perceive what is at stake.

B. A DEFINITION OF SCHOOL MANAGEMENT

Unlike the word “instruction”, which has been more clearly defined by the courts, the word “management” has remained vague and relatively inoperative in terms of the rights conferred under section 23. In the next two sections, we try to make the term more “operational”. We therefore propose a definition of school management adaptable to minority communities.

The word “management” is very popular in our society, related as it is to efficiency, cost-effectiveness and responsibility. It can be used to refer to projects, or to human, physical or budgetary resources. “Management” is often synonymous with administration, direction, organization or mandate. Each of these words suggests the wish to obtain and exercise decision-making power, whether in education or elsewhere.

In the Canadian educational system as we know it, school management is based on democratic and structural principles. Management, then, is a collection of agreements among those who effectively take the decisions (the authorities), those who can influence the decision-makers (the power of influence) and those whose lives are affected by this authority and power. Henchey and Burgess explain it as follows:

The governance of education in democratic societies today is the result of a complicated interplay among those who exercise authority (the right to make decisions), those who exercise power (the capacity to influence decisions), and those whose lives and interests are affected by this authority and power. In order to understand and to participate more effectively in this complicated process, it is important to know who exercises authority and power and how these are utilized. (1987, p. 41)

The balance among authority, power and the people subject to them is controlled by laws and by school regulations. The school system is the ensemble of administrative structures which bring together the forces of management and the persons affected by management. To comprehend the effectiveness of the school management system, it is necessary to know *who* exercises authority and influence and *what decisions* have to be taken.

For official language minorities, school management essentially means the adherence of the forces of authority and influence to the linguistic conditions of the target group. It is necessary, therefore, to have a structure in which the same linguistic group can impose authority (take decisions), exercise influence (apply pressure) and be subject to authority and influence. In these conditions, school management means the exercise of control and influence within nine components³.

In the following section, this description of school management is used to determine what kind of objectives are required for official language minorities to have effective school management.

C. SCHOOL MANAGEMENT OBJECTIVES

Demands for control of school management have four objectives: (1) implementation of rights conferred under section 23; (2) equal treatment with the majority; (3) linguistic homogeneity in the grouping of management forces; and (4) decision-making on vital aspects of minority education.

1. Effective implementation of full rights

First, paragraph 23(3)b) of the Charter gives eligible parents the right to have their children taught “in minority language educational facilities provided out of public funds.” As we noted in Chapter I, courts in Ontario, Alberta, Prince Edward Island and Saskatchewan, despite having distinct interpretations, have confirmed the minority’s right to manage “where numbers warrant.” The first objective in demands for school management must therefore be to establish a structure to effectively implement the rights conferred. Circumstances vary by province and territory, as do the means of ensuring the exercise of management, but the right remains the same.

2. Equal treatment

Control of school management by minorities also aims at achieving equal treatment with members of the majority. It is understood that education should give everyone equal opportunities in society. Minorities ought therefore to have access, equally with members of the majority, to a structure that permits them to obtain positions and promotions in universities, in business, and so on. Two conditions are necessary to make this possible: the implementation of a system which guarantees quality of service in the minority language; and effective teaching of the majority language.

Equality of access to positions and promotions is achieved mainly through education at the university and community college levels. It is understood that post-secondary education is the key to individual and social success.

In this regard, the situation in Ontario in 1985 merits examination. Many other provinces could provide similar examples, particularly in places where minority education is managed through majority school boards.

Churchill et al., [1985] considered that in Ontario Francophones undertake university studies in distinctly lower proportions than Anglophones because the particularities of the school system have the effect of preventing Francophones from attending university:

The relative likelihood of a Francophone of becoming registered in a grade 13 program leading to university studies and to better employment has stood at about 70% of the likelihood for a non-Francophone for nearly 12 years. These figures show that the measures taken after the 1968 reform [recognition of French schools] came into effect did not significantly alter the existing

inequality between Francophones and Anglophones with respect to school.
(1985, p. 302, underlined in original) [trans.]

The causes of the inequality identified by Churchill et al. all stem (except in the case of small schools) from conditions which control of management by the minority could partly remedy. The causes are:

- the poor quality of services offered in French;
- a lack of cultural resources (such as French-language library books);
- a need for supplementary cultural activities;
- teachers' qualifications; and
- the difficulty of working in a bilingual setting.

Another example shows that the quality of minority education is higher when the minority manages it. When the Francophone minority in New Brunswick took control of school management, parents noticed academic improvement⁴.

In our society, equality of access to educational services is considered to be a right, not a privilege. All school structures are based on this principle, whether it applies to majorities or minorities. For the minority as for the majority, equality of access to services comes through control of school management.

The second condition for equality of opportunity is effective teaching of the second language, the language of the majority. This learning process cannot be effective unless the minority language is mastered. Many studies attest to this fact: to achieve additive bilingualism, it is necessary to have learned one's mother tongue well (Fishman, 1980; Cummins, 1984, 1986; Fitouri, 1984; Mikes, 1984; Skutnabb-Kangas, 1984; Landry and Allard, 1987). Landry and Allard, for example, state:

Much research has shown that giving students from minority groups the greatest possible amount of instruction in their mother tongue will not only help them to maintain their language, but will also contribute to a better learning of the second language. (1987, p. 77) [trans.]

Minorities can enjoy equal opportunity only to the extent that they are able to master their mother tongue. In this context, certainly, the role of the minority school is to offer effective instruction in the minority language. Only under this condition, moreover, can minorities aspire to a high degree of bilingualism for their members, given the obvious support and prestige from which the majority language benefits.

3. Consolidation of forces of authority and influence with the persons affected

Control of school management by the minority also has the objective of consolidation. A rapid means of effecting this consolidation is to base it on the admissibility criteria of

section 23. This allows for homogeneity. An effective school management structure can therefore consolidate within a single structure belonging to one linguistic group the forces of authority and influence with the persons affected: i.e. parents, elected representatives (if any), directors of schools and of regions, and some ministry of education staff. All of these people share the language of the minority.

4. Decision-making on vital aspects of conditions of growth

The final objective of control of school management by official language minorities has to do with decision-making on matters vitally related to community development. We make general mention of this objective here: when we come to describe the components of school management⁵, we will be able to provide an operational definition⁶.

For a minority to be able to take charge of its destiny, it must first decide on the criteria for membership in the group. Thus, for example, adequate application of the eligibility criteria for rights conferred by section 23 must come very much from the minority itself. Moreover, control of school management is intended to safeguard the field of day-to-day decision-making as it applies to all other specific aspects of education influencing the vitality of the minority.

D. OBSTACLES

A school management project by an official language minority can, nonetheless, evoke fears in minority parents, in school administrators (minority or majority), or even in the majority itself. We attempt here to demystify these fears, because they constitute so many obstacles to the success of projects to implement the rights conferred by section 23.

1. Management ability

The first objection to school management by minorities is a general one. It has to do with their ability to manage minority institutions. Parents especially are ill at ease and ill-prepared for the idea of taking decisions affecting the educational future of their children, because they are not specialists in the matter. On this, one has to agree with Arsenault that:

if citizens of the French (English) minority have assumed their management rights and have continued to offer students a teaching program that meets their needs, one has to suppose that others too can exercise this power. (1987, p. 8) [trans.]

If the minorities of Quebec, New Brunswick, Ontario (Toronto and Ottawa-Carleton) and even Unit 5 of Prince Edward Island can do it, then official language minorities anywhere in Canada can manage their own school systems.

Minorities, moreover, can have confidence in their management skills. The school management system is structured in such a way as to provide community representatives

with the support of experts and administrators. That is how it is for members of the majority, who are neither better nor worse equipped, at the beginning, to manage a school system. It is not the election of trustees that secures greater competence, but the hiring of qualified personnel. Official language minorities are, *a priori*, equally competent to manage their educational systems.

2. Fear of becoming second-class citizens

The second fear expressed by minority members is that of becoming second-class citizens. Proof to the contrary is gradually accumulating: more and more, it is admitted that minority education is not a ghetto. This is the paradox: minority education is a necessary condition for becoming a full-fledged citizen, and complete mastery of the minority language is the cornerstone.

3. Majority-minority divisions

What militates most against minorities' demands for and acquisition of control of school management is the prospect of a deep division between majority and minority groups. The majority, speaking principally through the voice of provincial governments, is nervous: will a management system for the official minority which is different or parallel fragment the social, economic or political unity of its territory?

There are minority demands world-wide for a redistribution of educational resources to give minorities a more equal part. Governments have two choices: to oppose this redistribution or to effect it. There is a great deal of research to suggest that the degree of division between minorities and their majorities is directly linked to the attitude with which these demands are met:

The type and extent of linguistic demands by an ethnic group will depend on the degree of accommodation by the dominant group. If the elite of the ruling group is ready to compromise, demands may not go beyond a redefinition and redistribution of roles within the system. (Hamers and Blanc, 1983, p. 214) [trans.]

The situation can be presented as follows: minorities affirm their identities or are assimilated. When they choose to affirm their identities, they spark a reaction from governments. This reaction can lead either to division and confrontation or to accommodation.

It must be stressed that autonomy is not synonymous with division. "Division" expresses a harmful state of relations between the majority and the minority; "autonomy", on the other hand, is a necessary condition for minority development.

We have described three fears which prevent minorities from demanding school management and majorities from granting it. These fears, although comprehensible, stem from a lack of

information. The willingness to overcome this deficiency, the willingness to know and to understand, will not cause these fears to disappear completely, but it will help to reduce them considerably.

II. COMPONENTS OF CONTEMPORARY SCHOOL MANAGEMENT

At this point it becomes necessary to describe the constituent elements of school management. This description provides a base model from which official language minorities and provincial governments can develop effective management systems appropriate to each province or territory. In this section, emphasis is placed on describing a school management system that is actually in operation. We begin by determining the general limits imposed by the nature of the educational system in any discussion of school management for minorities. Next, we examine in detail the components of contemporary school management. Finally, we deal with the mechanics of school management by describing decision-making levels.

A. CONTEXTUAL LIMITS OF SCHOOL MANAGEMENT

Following are a few cautions which may serve as limits to the degree of innovation to be introduced by an official language minority school management system. Everyone admits that the current school system has flaws. Its critics claim that it is inefficient; that its objectives do not correspond to the needs of today's — or tomorrow's — citizens; that it dehumanizes young people; that it does not reflect parental aspirations; that the decision-makers are not representative; and so on. Like any system, it requires constant readjustment to changing demands. The system into which a sub-system of education for official language minorities must be introduced is not, therefore, perfect.

The argument in this section is not based on a criticism of the school system, but rather on an exhaustive description of it. We attempt to provide an overall view of the present system, because its components should not be viewed in isolation or separated from one another. This overview, together with a description of the component parts, will allow for unified planning by minority groups and governments.

The establishment of a school management system for official language minorities does, however, call for innovation, because such a system does not as yet exist throughout Canada. It requires the creation of sub-systems corresponding to the rights conferred by section 23 of the Canadian Charter of Rights and Freedoms. The present system must be modified to accommodate the needs identified by the minorities and to attain the objectives previously described: implementation of rights and equal treatment, linguistic consolidation and decision-making on vital aspects of education.

Modification of the school management system for the minority cannot, however, involve a complete transformation of the majority system. Since everything cannot be changed all at once, the transformation (or creation) of a management system for minorities must be done on the basis of the system actually in force in each province or territory. We work here from the following principle: an adaptation of the existing system and some of its components to serve minority needs and objectives is more prudent and more viable than a complete transformation. This does not, however, obviate the need to remedy, as far as possible, the drawbacks of the existing system through careful consideration.

Canada's existing educational system has drawbacks that set tangible limits which will be inherited by any sub-system developed for official language minorities. Any innovation in this area must be planned prudently, taking into account the limits of the existing system, and must be realistic in its outlook. That is why we shall now describe in detail the components of the management system for education currently operating in Canada.

B. COMPONENTS OF SCHOOL MANAGEMENT

In general, a school system presupposes the existence of certain physical, financial and human resources. In the physical resources category, school systems must have the following elements:

- premises;
- teaching aids, such as manuals, library books, and audio-visual and computer equipment;
- means of transportation; and
- communication tools, such as telephones, a photocopier, etc.

Financial resources consist mainly of budgetary allocations from different sources. They include:

- taxes;
- provincial grants;
- federal grants (for example, the Official Languages in Education program of the Department of the Secretary of State);
- special grants for construction, transportation, etc.

Finally, we include under human resources:

- the student body;
- teaching staff;
- administrative staff;
- parents;
- boards of trustees;
- ministry of education officials.

These resources are available in different proportions depending on the size of the district and population served, and on agreements and sharing arrangements with other bodies.

The organization of these three categories of resources managed by an educational system is harmonized around the idea of “service”. This idea makes it possible to link resources with objectives for the benefit of the persons utilizing the service:

A service is “an event or a series of events which is supposed to benefit someone.” This event puts resources (human, financial, or physical) to work in order to benefit a user. The user is found at the centre of this network of concepts. When the resources are employed without any benefit to the user, no service can be said to have been rendered. (Churchill, et al., 1985, p. 23) [trans.]

This idea of service is particularly important when we look at a system of school management for minorities. School management offers a service: it is a field in which, taking the needs and objectives of minorities as a point of departure, the authority and influence of decision-makers are consolidated around one single linguistic group. Accepting the idea of service makes it possible to adopt the user’s viewpoint. It becomes a question of what approach will best facilitate the adaptation of the school management system to particular ends. This is the viewpoint we adopt in this section.

School management components are listed in Table III-2, which can serve as a summary. Nine components are listed, each corresponding to a particular field of management. In the following pages, we describe each of these components with details of corresponding activities⁷.

1. Teaching

The teaching component includes all instructional activities. It is in this service area that students receive their education. Teaching is sub-divided into five sub-components corresponding to five types of client.

Pre-school teaching is offered by what we usually refer to as junior and senior kindergartens. Provincial programs focus on different subject matters. The curriculum includes language, mathematics, music, social skills, art, motor skills and religion (in some boards). Two provinces, New Brunswick and Prince Edward Island, offer no publicly funded, pre-school education.

Elementary schooling provides the essential learning base for all students. The provincial ministry of education chooses the subject matter to be taught. The term “elementary” or “primary” applies to programs from grades 1 through 6 in Alberta, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, the Yukon and the Northwest Territories. In British Columbia the term “elementary” also includes grade 7. In Saskatchewan, Manitoba and Ontario, it applies to grades 1 through 8.

Two groups stand out within the elementary schooling clientele: children with special needs, who require the services of specialist teachers; and gifted children, whose teachers are often in search of suitable programs. Official language minorities must give particular attention to these groups: when teaching programs are being set up, there is a tendency to serve the needs of the majority and neglect smaller groups.

Secondary schooling is more complex. At this level more than the others, a non-local consolidation of services is justified. Secondary schooling is aimed at a more specialized kind of education. In addition to the regular academic program, there are programs for vocational training through a practical common-core syllabus and through workshop teaching (woodwork, metalwork, cooking, etc.). A few large centres may offer vocational and technical teaching in specialized schools, but as a rule these programs are offered through composite high-schools. The term "secondary" refers to programs for students from the age of 12 to 16, 17 or 18. These programs are delimited in various ways:

- grades 7 through 12 in Alberta, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, the Northwest Territories and the Yukon;
- grades 7 through 11 in Quebec;
- grades 8 through 12 in British Columbia;
- grades 9 through 12 in Saskatchewan and Manitoba;
- grades 9 through 12 (through 13 until 1990) in Ontario.

A number of school boards offering instruction to the official language minority have a fourth clientele as well: students in language upgrading classes. These classes are offered to minority children who lack sufficient mastery of the language of instruction. Language upgrading classes also prepare immigrant minorities for entry to regular classes: French-language in Quebec and English-language in the other provinces. Language upgrading classes are, by their nature, transitional.

Continuing education is not offered by all school systems. It meets, however, the growing needs of an adult population wanting to take advanced training or to fill in educational gaps.

In conjunction with other components, the main activities of the teaching component are:

- setting priorities and pedagogic methods (*e.g.*, choice of teaching level, courses for gifted children);
- daily course development and planning;
- working out schedules for courses, students and teachers;
- research and development of teaching evaluation tools;
- occasional pedagogical changes of direction;
- identifying school clienteles for each year;
- identifying the needs of each category of students;

- placing students to serve the needs of individuals and of various groups;
- preparing examinations; printing and distributing newsletters. (Girard, 1987, pp. 8-9)

It is clear, in short, that the principal teaching arena is the school.

2. Finance and general administration

This component, being at the heart of school management, is generally located in the school board's administrative offices. Finance, managed on a day-to-day basis by the chief accounts officer, balances *revenue collection* and *expenses*, including *debt-servicing* costs. *Payment* of employees is handled by this section, as is *budget development*. General administration, headed by an *executive director*, sets *policies and directions* for educational projects as defined by the *school board* (elected or appointed) and the ministry of education. *Internal controls* are exercised through regular evaluation and daily decisions. *External controls* are provided by the submission of reports to the ministry of education in each province. Ministry supervision ensures fair and effective management in relation to available resources.

Activities within the finance and general administration component are described by Girard (1987, p. 9). They are provided through the accounts ministry and the general administration office, and include:

- setting policies to guide the actions of staff;
- developing philosophies of education, evaluation and programming;
- long-term planning;
- determining the effectiveness of established policies and procedures;
- adopting a management philosophy;
- developing a management plan for the system;
- preparing operating and acquisitions budgets;
- developing an accounting and financial analysis system;
- preparing financial statements.

The finance and general administration component is the nerve centre of the school system.

3. Personnel

The personnel component is generally housed on school-board premises. It comes under the director general, the assistant director or the personnel director. This component is responsible for the following activities: *job descriptions*, *recruitment*, *selection*, *assignment*, salaries and evaluations for all staff, including teaching, clerical, professional, special and maintenance. *Accreditation* of teaching staff (teaching certificates) is generally handled by the ministry of education, but in some conditions, for example where there is a dearth of qualified personnel, school boards are authorized to hire non-accredited personnel. This section also oversees *professional development* of teachers through workshops, and *organizational development* of the school system through long-term planning.

Girard (1987, p. 9), describes the activities of this component as follows:

- updating personal data on seniority, training, professional experience, etc.;
- assignment of responsibilities to various personnel categories;
- recruitment and selection of new staff;
- coordination of effort among all categories of staff;
- supervision of personnel;
- implementing strategies to improve motivation, job satisfaction and quality of working conditions;
- establishing staff development programs;
- setting up fair remuneration systems.

4. Material management

The material management component provides the necessary material support for teaching, administrative and student activities. The director general, the trustees and the chief accountant oversee decisions and administration. Large school boards may establish a separate administrative section. This component, normally made up of professionals and manual workers, looks after *premises (leasing, construction, maintenance and repair)* and related questions such as *janitorial services, energy consumption (heat and electricity), insurance, security, supplies and transport*. It is also responsible for the smooth functioning of *telephone and electronic communications systems*. All services within this component, apart from general administration, can be provided by outside sources or through agreements with other organizations.

The activities of the material management component are:

- development of a technical services plan to support teaching services;
- leasing, purchase, construction, maintenance of teaching and administrative premises;
- implementation of a management plan and maintenance of premises and equipment;
- establishing purchasing procedures;
- inventory updates;
- study of submissions for insurance coverage;
- implementation of service exchanges;
- planning communications systems to meet needs.

These activities need not be performed exclusively by the material management section, but can be handled by exchange or purchase of service when the school board cannot afford the capital investment required.

5. Student services

The fifth component, student services, delivers services to students which complement and round out the teaching services. These services include *guidance (orientation, psychological*

counselling, academic advice, health, pastoral services and extracurricular activities), *daily supervision* and *attendance records*. These duties are often performed by professionals, teachers and the school principal. Responsibility for *admission criteria* is shared by the central administration and the school principal. Student *transport* services and the *transfer* of students from one school board to another are normally planned and authorized by the central administration, and may involve agreements or exchanges. Three additional elements are optional, and depend on the specific needs of the student clientele: *cafeterias, residences and scholarships and loans*.

Among the activities of the student services component, Girard (1987, p. 10) mentions:

- identifying the student clientele's needs for orientation, counselling, health, pastoral care (if any) and extracurricular activities;
- distributing information on available services;
- developing admission criteria;
- implementing a system for monitoring attendance;
- assessing needs and establishing the services required: cafeteria, residences, loans and scholarships;
- identification of student transportation needs;
- process for student transportation contract negotiations;
- evaluation of student transportation system.

6. School-community relations

A sixth component concerns school-community relations. This component is made up mainly of committees. In most provinces, a *home and school committee*, consisting of the school principal and elected parents, acts as an advisory body. A *school committee* brings together students, parents, teachers and administrators. A third committee may bring together *school trustees* and *municipal councillors* to discuss questions such as the exchange of services or the collection of taxes. Finally, the idea of a *community school* gives the community a sense of belonging to the school. All these mechanisms serve to strengthen the links between school and community and to optimize the services the school can offer the community.

Activities of the school-community relations component may include the following:

- developing an information system between the educational system and the community;
- creating links with businesses and organizations;
- working out a schedule of meetings with community committees and representatives;
- making premises available to local organizations;
- evaluating the effectiveness of the school-community communications program. (Girard, 1987, p. 10)

7. Complementary activities

A seventh component, complementary activities, includes services which facilitate teaching. These include the *library*, *audio-visual equipment*, *computers* and *informatics*. These resources are vehicles for the teaching content, and are usually located in one place (library, audio-visual centre, informatics room) and supervised by a specialist. The activities relating to this component are:

- evaluation of available material and needs;
- preparation, in cooperation with the teaching component, of a development plan;
- setting up purchasing and storage systems;
- preparing schedules.

8. Programming

The programming component is extremely important, because it defines teaching content. It is a pivotal component of the school system and is responsible for *program development*, *evaluation* (programs and teaching materials) and *teacher training*. It also includes *school evaluation*. School evaluation must take account of the opinion of everyone concerned, including parents. This component transcends the local context of the other school management components: it involves officials of the *ministry of education* and teacher training institutions. It is a necessary presence and demonstrates that school management does not end with the school, nor with the local or regional school board. The programming section is complementary to the local school board, the ministry of education and universities and colleges.

The activities of this sector are:

- program development;
- choice of teaching materials;
- supervision of programs and courses;
- school evaluation;
- pedagogical leadership;
- relations between the school board, the ministry of education and the teacher training institutions.

9. Evaluation and research

The ninth and last component of school management is evaluation and research. This component performs *evaluations of student achievement* on the basis of valid tests, an evaluation distinct from the limited evaluation practised within any pedagogic process. It judges the effectiveness of the *organizational system*, a necessary process for improving management. The *competence of teachers* is also measured, an activity which requires the services of specialized personnel, or even the director of the school board. *Research*, whatever its form or objectives, is important in establishing short- and long-term perspectives

for school management. In short, this component is concerned with the quality of teaching and services, and makes long-term planning possible.

The activities of this component are:

- development or adaptation of standard tests;
- recruitment of researchers;
- development of evaluation criteria for teaching personnel;
- organization of evaluation teams for the school and for the staff.

The nine components described above constitute the whole of what one may call “operational management”. To provide a better understanding of where management takes place, we now describe the levels of influence and authority that provide for such operational management.

C. DECISION-MAKING LEVELS: FUNCTIONS AND DISTRIBUTION OF MANAGEMENT COMPONENTS

The educational services which school management administers are divided among three principal fields, referred to here as levels. Their areas of activity and interest are not uniform: they vary from province to province and from region to region. More precisely, the quantity of services offered by a given level is dependent upon the powers conferred on it. For example, the evaluation of a school’s services may be done by the ministry of education or by the school board. In a centralized system, the evaluation will be done by the ministry; a decentralized system will allow users to evaluate their own institutions. The levels of school management, therefore, are all situated along a centralization-decentralization continuum.

A study by Brassard and Brunet (1983) demonstrated that the education system adapts to the exigencies of the community to find a method of decision-making suited to each community while working within the regional or provincial framework. This statement requires two comments. First, it is the operational flexibility of the management system that enables it to adapt to the needs and demands of the community and of the persons who are daily affected by the system. Secondly, management by official language minorities can also, without incongruity, be dynamic and adapt to the community.

The following three decision-making levels are described: the provincial level (ministry of education); the regional level (school board); and the local level (school). We give a general description, showing which particular activities are usually associated with decision-making at each level.

1. Provincial level

The chief responsibility of the *ministry of education* for each province is to ensure the smooth functioning of the education system established by the education act. The act describes the powers and responsibilities of the organizational elements of the school system: ministry,

boards, principals, etc. Ministries of education also ensure that overall educational goals and objectives are met. To put it more concretely, the ministry of education determines the organization of educational services, even for a decentralized system. It establishes the principal guidelines for the nine components described above. The major functions of ministries of education may be grouped under four categories: pedagogical services, human resources, financial resources and information.

The ministry sets the framework for pedagogical services. At a minimum, the following activities are its responsibility:

- development and approval of programs of study and teaching guides;
- approval of teaching material (manual and supporting material);
- optional, specialized and special course descriptions;
- granting of student diplomas and teaching certificates;
- development of curriculum policies.

In the area of human resources, the ministry provides:

- a general definition of school working conditions;
- development of teacher training and professional training policies;
- establishment of a program implementation network.

Some ministries, including those in New Brunswick, Prince Edward Island, Newfoundland and Quebec, go so far as to negotiate collective agreements for teachers. Others leave this matter to local or regional bargaining.

Material resources are distributed mainly through the allocation of school taxes and financial resources to local (individual school) and regional (school board) levels. Functions falling under the material resources category are:

- development of budgetary rules for the allocation of funds;
- development of rules for the administration of funds by institutions;
- authorization for loans and construction projects.

Finally, the ministry of education acts as an information agent for the collection, organization, security and dissemination of data on the management of the educational system. Its role is not only to direct decision-making but also to ensure that local and regional decisions are made on the basis of appropriate information.

The ministry of education of each province plays a preponderant role in the education management system: it guides and even directs decision making at the local and regional levels.

2. Regional level

School boards establish a decision-making network at the regional level. It can happen, however, that the regional level is centred around the local level and is concerned with only one school, as is frequently the case with small school boards. Although the ministry of education is the principal source of policy, rules and guidelines, the school boards execute these directives and put them into practice. They too are involved in the nine components of management.

Pelletier (1987) describes the concept of a school board as follows:

The administration of public education at a local level is the responsibility of the school boards, true corporations headed by a board of directors which is called the board of trustees. Trustees are responsible to their constituents and to the provincial government for the management of public schools in their territory. (p. 31) [trans.]

Jurisdiction over provincial territory is divided among school boards, creating a link between the moment of decision and the persons affected by such decisions. In some provinces, notably Ontario, Saskatchewan and Alberta, the province is divided up according to two school-boundary maps: one for the public school system, the other for the separate (denominational) school system. In Quebec, as in Newfoundland, both school boards are denominational. New Brunswick has two maps: one for English-language schools and one for French-language. With Bill 107, Quebec is tending in this direction. The school maps are for the most part similar, but can vary to include a larger territory depending on the type of association chosen, language or religion.

The formation of school boards also varies from province to province. In most provinces, all school boards are elected by adult residents of a given constituency. In Nova Scotia, however, only two levels of school board are elected. The school board's formal authority flows from the education act that determines its role, composition, method of selecting members, etc. Two sources of a board's authority can be discerned: the authority deriving from the exercise of rights delegated by the ministry of education, and the authority of an organization elected through an ideally democratic process.

The functions of the school board touch on the nine components mentioned in the preceding section. Its principal responsibilities have equally to do with pedagogy, human resources, physical resources and information. The functions of the school board and the ministry are harmonized in the field of action. They fit together in a pyramid. The ministry develops general principles and a philosophy; the school boards attend to the delivery of services. The boards are more directly active in day-to-day education, because they are the managers of schools and services. They guarantee not only the quality of education, but its relevance to the immediate needs of the local and regional clientele.

The functions of the school board impinge on all the responsibilities described in Table III-2. These responsibilities are extensive and call for particular attention to the formulation of regional policies, the taking of action guided by these policies, and supervision of such action.

The elected (or appointed) school board body hires the staff needed to carry out its functions. A director or a director general is responsible for administration and the operation of the nine components. He or she plays an executive role. Various additional staff members are also hired.

Table III-2
Components of a full-scale school management system*

1. Teaching	2. Finance and general administration	3. Personnel	4. Material management
Pre-school teaching	Administration	Administration	Administration
• language, mathematics, music, social skills, art, science, motor skills, religion	Budget	Work organization	Supply
Elementary teaching	Internal control	Recruitment and selection	Shipping
	External control	Assignment and salaries	Maintenance and repair
	Payroll	Evaluation	– buildings, grounds
• regular	Collection of revenue	Accreditation (provincial)	Janitorial services
• students with special needs/gifted	Boards of trustees and boards of directors (election and/or appointment)	Professional development	Energy consumption
Secondary teaching	General management	Organizational development	– heat, electricity
• regular	Corporate secretariat		Leasing/construction of buildings
– courses	Debt servicing		Safety and security
• vocational	Orientation of educational projects		– insurance, surveillance
– shops	Policy		School and municipal transfers
– common-core syllabus	Informatics		– exchanges of service
• students with special needs/gifted			Electronic communications
• groups of special students			– telephone, intercom
Language-upgrading classes			
Continuing education			

* Tables III-2 to IV-20 are taken from Manel, 1991 (adapted from Leclerc, 1987).

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research
Guidance	Parent committees	Library	Program development	Evaluation of student achievement
• orientation	School committees	Audio-visual	School evaluation	Evaluation of school system
• psychological counselling	Community schools	Computers and informatics	Evaluation of teaching materials	Teacher evaluation
• academic information	Joint municipality-school board committee		Program evaluation	Research
• health			Teacher training	
• pastoral care			Ministry of education staff	
• student activities				
School enrolment				
• admission				
• attendance				
Supervision				
School transportation				
• contracts				
• transfers				
Cafeteria				
Loans and scholarships				
Residences				

3. Local level

The third decision-making level, the local level, is located in the school. The school is usually the only structure with which parents and the public have direct contact. Since the school has a direct influence on students, it is the most important structure in the school system; however, it also has the most limited authority.

A large proportion of Canadian schools have parent advisory committees. These committees, working with the principal, give opinions on schedules, teaching material, the grouping and classifying of students (whether special or other), religious instruction (if any), student evaluation and extracurricular activities. These are examples only, since each province and school is unique. Each determines its own operation and accords a particular importance to the part played by parents.

The concept of a community school is taking on more and more importance in contemporary society. The community school structure in Quebec is especially interesting, because through it one can conceptualize a system which meets the needs of the community. The orientation committees⁸ which, following Bill 107, must be formed for each school provide a new formula for local participation.

The main conclusion to be drawn from this section on the school management system of the majority society is that management is not a set thing. It is adaptable to local situations and needs. The three levels described above are, in reality, interchangeable, despite their appearance of a strict and immovable structure.

The future of school management is still difficult to predict, but its main trends can be discerned: decentralization; and the redirection of school system powers toward the individual school.

In fact, school administration in the years to come will have to deal more and more with increasing social criticism with regard to school activities and relations with the collectivity. In the face of the increasing uncertainty which this situation will create, it is probable that in the coming years we will see a redirection of educational powers toward the school and its partners. Already, some studies demonstrate that this is the *sine qua non* for achieving an effective school, open to its environment (Goodlad, 1984) ... These expectations in the face of real political and administrative decentralization of the regional (and provincial) administration's areas of decision in the direction of schools, the real sources of production and of social accountability in the educational organization, will certainly constitute one of the greatest challenges for school administration from now to the end of the 1980s. (Pelletier, 1987, pp. 42-43)
[trans.]

It appears that in future we will see greater local autonomy, a situation beneficial to parents in general and to minorities in particular.

III. SCHOOL MANAGEMENT FOR OFFICIAL LANGUAGE MINORITIES

Having described the structures and mechanisms of school management for majority groups in Canada, we now identify the elements of school management which most directly affect official language minorities. To begin, we present a short account of the major questions which official language minorities face on school management. We then deduce from this account the particular principles which should guide the development of management models for minorities. These principles will also provide the main evaluation criteria for models which have been proposed and implemented, as described in Chapter IV. Finally, working from these principles, we propose a division of the components of school management, categorizing educational services as essential, optional and suitable for sharing.

A. SHORT ACCOUNT

In discussing the control of school management by official language minorities, we must recall that, at a minimum, "a degree of linguistic minority management and control of program and facilities should be guaranteed" (*Mahé et al.*, [1987], at 49). The five responsibilities cited by Judge Purvis correspond to five of the nine components described in Table III-2:

1. expenditure of funds provided for such instruction and facilities;
2. appointment and direction of those responsible for the administration of such instruction and facilities;
3. establishment of programs of instruction;
4. recruitment and assignment of teachers and other personnel;
5. concluding agreements for education and services for minority language pupils (p. 49).

We see here references to instruction (1, 3, 5), finance and general administration (2), personnel (2, 4), programming (3) and also, if we consider that the term "facilities" necessarily refers to premises, material management. The components which are not mentioned are, on the one hand, those considered as already having been acquired because they necessarily belong to the school (student services, school-community relations and complementary activities), and, on the other, the one exercised in liaison with the ministry of education or, in large school boards, autonomously: evaluation and research.

We conclude that the categories mentioned in the judgment of the Court of Queen's Bench of Alberta not only constitute a minimum level of minority management, but also serve as

indicators of the pivotal functions of management, and this from a judge who did not have at hand the detailed school management overview grid that we have proposed.

To determine the essential components of school management for minorities, we have referred to the objectives⁹ of this management. The principles which must regulate all decisions about school management and guide the choice of these elements also derive from these objectives. This is the subject discussed in the following section.

B. PRINCIPLES TO GUIDE THE DEVELOPMENT OF MANAGEMENT MODELS

Three principles or fundamental rules help guide the development and evaluation of management models which will allow official language minorities to flourish. The first principle, linguistic homogeneity, is a *sine qua non*. Secondly, geographic consolidation must produce "a sufficient number". Thirdly, management must be supported by just and equitable financial resources. These principles, providing operational premises, encourage the implementation of section 23 of the Charter.

1. Homogeneity

Under conditions of linguistic homogeneity, the essential basis of minority management, every person engaged in minority teaching or minority administration belongs to the minority language group. Homogeneity makes it possible to attain the objectives set forth in section 23 by encouraging the development and realization of an educational project which responds specifically to the needs of the minority group. It avoids the waste of energy inherent in having to convince the majority of the sound basis of every request, as is the case when the minority forms part of advisory committees to majority school boards. Homogeneity also creates a sense of belonging to the minority community and so accelerates the community's development.

Linguistic homogeneity affects voting patterns: it is the main criterion of choice of clientele participating in voting and appointing. Measures should therefore be taken in this respect to facilitate the individual's choice of belonging to the minority community.

Within the school and school administration, homogeneity means the hiring of minority language personnel. Mastery of the minority language is of prime importance, because these people become models. Admission criteria to the school are also necessary.

Decision-making thus comes from the minority itself. It is not, however, out of the question to share certain services with other groups such as majority school boards or private organizations.

2. Geographic consolidation

The second principle, that of geographic consolidation, complements linguistic homogeneity.

For the management system to be effective in achieving its objectives, one or more geographic regroupings may have to occur to solidify linguistic homogeneity.

This means, first of all, a school boundary map which unites the various minority communities. This consolidation serves to meet the criterion, "where numbers warrant"; in effect, a sufficient number, whatever it may be, is achieved when competent authorities redraw school boundaries to recognize pockets of the minority population.

Geographic consolidation can take place at several levels. A first, the local level, satisfies the immediate needs of the community and of parents. This first regrouping creates some degree of local autonomy necessary to the development of persons using the education system. Regrouping around the school also fosters participation. The school becomes the unifying agent (Desjarlais, 1985). The Manitoba Ad Hoc School Management Planning Committee expresses it as follows:

As education is a responsibility in which the state, the community and parents all share, it matters that parents be given the means to participate actively in the development of the orientation of the school their children attend. School management by the minority must provide for mechanisms to increase the participation of parents at the local and regional levels. (1988, p. 41) [trans.]

Local groupings affect parents, the school and the community.

A second level of consolidation, affecting school boards, unites the forces of authority and influence at a regional level. Through this regrouping, the minority provides itself with a mechanism for decision making and authority, and can present its needs to the government more effectively. The process of developing as a group takes place, moreover, at this level. Dumont (1979) and Poche (1979) point out that it is at the regional level that the minority develops a sense of belonging and where the transmission of culture is effected. At this level, the differences engendered by geography and demography (e.g. between the urban and the rural environment), are experienced on a daily basis and laid down in language and culture.

Finally, a third consolidation at the provincial level offers minorities a much larger field of action. As a rule, it takes the form of a school association. In provinces where the minority population is smaller, provincial school boards may be formed as an administrative and decision-making sub-stratum, as was proposed in Saskatchewan in 1989, in Manitoba in 1988 and, to a degree, in Prince Edward Island in 1990.

The provincial consolidation must also include an office within the ministry of education which is exclusively reserved for the needs of the official language minority. Given the influence and decision-making power of this decision-making level, (see preceding section), minorities cannot fully participate in managing their own education unless they participate

at this level, because it is the responsibility of the ministry to determine the general objectives of education. If official language minorities are absent, there is a risk that the general and particular educational orientation will not take account of their needs.

Minority management, to be effective, must therefore be implemented at three levels of organization: local, regional and provincial. Management elements, however, may be distributed in various ways. The adoption of a creative approach to this question is facilitated by the flexibility and openness to its environment of a school system which is constantly changing.

3. Adequate financing

The last principle has to do with funding. There can be no management without adequate financial resources. Adequate resources must therefore be placed in the hands of the minorities, who, in turn, will then be able to make decisions in full knowledge of available means.

Minority education does not necessarily require more funding than majority education. A study by Loken (1985) shows that initial development costs will certainly be higher, but that once the system is established, costs will not necessarily be higher. Of the five categories of costs (administration, teaching, operation and maintenance, transportation, and capital expenses), costs related to student transportation were certainly higher in some regions. On the other hand, in these same smaller units administrative costs could be economic vectors. These are only examples: each minority group must meet specific needs, and each province or territory has a unique system of financing.

The question of whether official language minorities receive higher or lower funding than majorities should be treated on a par with the question of equality of treatment with the majority. This means, first of all, a non-discriminatory equality as described in subsection 15 (1) of the Charter. To attain equality, some groups, such as minorities, need special programs to improve their situation. This is the intent of subsection 15 (2): it legitimizes grants for the special measures which are often necessary for minorities to obtain equitable education. The principle of adequate financing, therefore, means that the financing must make it possible to receive, in the minority language, an education of similar quality as the majority's, without discrimination and/or with special measures.

The principles here set forth will now serve to determine the division of educational services into essential services, optional services, and services that can be shared. This is the subject of the next section.

C. DISTRIBUTION OF MANAGEMENT COMPONENTS FOR MINORITIES

With respect to effective and viable minority management, the components of educational services available to the majority fall into three categories. The components are either essential, or suited to sharing arrangements, or optional.

By *essential components*, we mean the decision-making areas crucial to the vitality of the minority culture. Without these components, management could neither be effective nor attain the objectives we have identified.

A *shared component* is an element which is essential to any model, but of such a kind that it can be provided through purchase of services or by agreement with another school board or another organization. The crucial point in a shared component is that minorities must be free to decide which elements of the management system they want to share, with whom they want to share them, and the criteria for sharing.

Services which enhance the educational experience but are not essential are gathered under the heading "*optional*".

This classification is summarized in Table III-3. The following codes are used: E (essential components), O (optional), P (possible to share with majority or minority organizations), and PM (possible to share with the ministry of education). Sharing with the ministry is a delicate matter and depends on the degree of centralization of the particular ministry.

1. Essential components

The essential components are:

- *teaching*: pre-school teaching, elementary teaching, secondary general, secondary vocational (common core syllabus), and the teaching of children with special needs and gifted children;
- *finance and general administration*: administration, preparation and supervision of the budget, internal control, payroll, determining revenues to be collected (if the system requires a tax increase), board of trustees (whether elected or appointed), general management, corporate secretariat, orientation of educational programs and policies;
- *personnel*: administration, job descriptions, recruitment and selection of personnel (especially teaching personnel), professional development, assignment and salaries of personnel, staff evaluations;
- *material management*: administration ;
- *student services*: guidance (including orientation, psychological counselling, academic information, health services, pastoral care (if any), and extracurricular activities), enrolment criteria and attendance records, day-to-day supervision;
- *school-community relations*: parent committees, school committees, operation of community schools;

- *complementary activities*: library and audio-visual equipment;
- *programming*: development of programs that respond to minority needs and school evaluation;
- *evaluation and research*: teacher evaluations.

The essential components correspond in great detail to exigencies identified in various studies (Foucher, 1987; Arsenault, 1987; Société franco-manitobaine *et al.*, 1988) and to the principles mentioned above.

2. Optional components

The optional components, to be discussed at the community and local level, are:

- *teaching*: adult education;
- *finance and general administration*: external controls, debt-servicing (if any), and computerization of the entire management system;
- *personnel*: accreditation (which is usually the responsibility of the provincial ministry), and organizational development of the system;
- *student services*: cafeteria, loans and scholarships (can also be shared with other organizations), and residences;
- *school-community relations*: the joint municipality-school board committee.

3. Shared components

The following components are suitable for sharing:

- *teaching*: specialized vocational secondary teaching;
- *finance and general administration*: external control, revenue collection, informatics;
- *material management*: supply, shipping, maintenance and repair of buildings and grounds, janitorial services, energy consumption, leasing and construction of buildings, safety and security, school-municipality cost-sharing, electronic communications;
- *student services*: school transportation, loans and scholarships;
- *complementary activities*: computers and informatics;

- *programming*: evaluation of teaching materials, teacher training, program evaluation (in cooperation with ministry of education staff);
- *evaluation and research*: evaluation of student achievement, evaluation of the school system (in cooperation with the ministry of education).

Services can be shared with neighbouring school boards (e.g. transportation) or community organizations (e.g. leasing of buildings). Cooperation and sharing with the ministry of education have been recommended within school management components: cooperation and sharing are, indeed, of great importance for minorities. Groups may choose the elements which they can incorporate in their particular situation.

Following the principle of consolidation, the sharing of components with external organizations or the redistribution of essential components among the three decision-making levels (local, regional, provincial) can vary depending on the minority and can give rise to creative and innovative models of school management.

Table III-3

Components* of a full-scale school management system for official language minorities: essential, optional and shared

1. Teaching	C o m p.	2. Finance and general administration	C o m p.	3. Personnel	C o m p.	4. Material management	C o m p.
Pre-school teaching	E E	Administration	E	Administration	E	Administration	E
• language, mathematics, music, social skills, art, science, motor skills, religion		Budget	E	Work organization	E	Supply	S
Elementary teaching		Internal control	E	Recruitment and selection	E	Shipping	S
• regular		External control	O/S	Assignment and salaries	E	Maintenance and repair	S
• students with special needs/gifted	E	Payroll	O/S	Evaluation	E	– buildings, grounds	
Secondary teaching		Collection of revenue	E/S	Accreditation (provincial)	O	Janitorial services	S
• regular	E	Boards of trustees and boards of directors (election and/or appointment)	E	Professional development	E	Energy consumption	S
– courses		General management	E	Organizational development	O	– heat, electricity	
• vocational		Corporate secretariat	E			Leasing/construction of buildings	S
– shops	S	Debt servicing	O			Safety and security	S
– common-core syllabus	E	Orientation of educational projects	E			– insurance, surveillance	
• students with special needs/gifted	E	Policy	E			School and municipal transfers	S
• groups of special students	O	Informatics	O/S			– exchanges of service	
Language-upgrading classes	O					Electronic communications	S
Continuing education	E					– telephone, intercom	

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research	Component
C o m m p.	C o m m p.	C o m m p.	C o m m p.	C o m m p.	C o m m p.
Guidance	E	E	E	E	E/PM
• orientation	Parent committees	Library	Program development	Evaluation of student achievement	
• psychological counselling	School committees	Audio-visual	School evaluation	Evaluation of school system	E/PM
• academic information	Community schools	Computers and informatics	Evaluation of teaching materials	Teacher evaluation	E
• health	Joint municipality-school board committee		Program evaluation	Research	
• pastoral care			Teacher training		
• student activities			Ministry of education staff		
School enrolment					
• admission					
• attendance					
Supervision					
School transportation					
• contracts					
• transfers					
Cafeteria					
Loans and scholarships					
Residences					

* E = Essential components
 O = Optional components
 S = Shared components for contracting for services with one or more organizations, not necessarily Francophone.
 PM = Programming, evaluation and research services may be shared with the Francophone branch of the provincial ministry of education.

IV. CONCLUSIONS

Before we go on to evaluate, in Chapter IV, management models that have been implemented or proposed for official language minorities, let us state a few of the conclusions to be drawn from our account of the ideal management system for these minorities.

To begin with, no management system is absolutely fixed: every system is susceptible to change to accommodate official language minorities. The wide range of means and decision-making levels guarantees the flexibility of a system which must of necessity be open to its environment. If an education system changes to acknowledge minorities, that is only one new modification among many others.

Second, the great changes that have taken place in the field of education seem to tend towards an increase in local autonomy. This will give parents a larger role to play in the decisions to be made on the education of their children. The people who are directly concerned will thus come to exercise authority and influence.

Third, an in-depth study of school services and their management elements makes it possible to identify aspects of management that are still hidden, aspects which even the minority has some difficulty in perceiving. The available information is not always clear: we have tried in this study to make it more explicit.

Since the ultimate goal of the management process is to permit official language minorities to flourish, the terminology used should reflect effective and exclusive management. Under current conventions, the term "school board" is synonymous with management power. It is the best known unit to reflect, in its symbolic sense, the all-encompassing management unit equivalent to the management powers of the majority. This unit can, however, take a different form, better adapted to the needs of the minority. It remains the case, nonetheless, that exclusive management must be the underlying principle.

The evaluation of management models in the next chapter is based on a series of criteria established in the earlier chapters of this study. We refer to them here in question form, to facilitate an understanding of the evaluations that follow. These, then, are the questions we have asked in evaluating each model.

Objectives

Does this management model meet the following objectives:

1. Does it implement the full rights described in section 23 of the Canadian Charter of Rights and Freedoms?
2. Does it establish treatment for the official language minority equal to the treatment of the official language majority?

3. Does it gather the three elements of management (authority, influence and users) under one linguistic banner?
4. Does it permit decision-making on vital aspects of the minority's conditions of growth? With respect to management, this means exclusive decision-making power over the essential components of education, i.e.:
 - i) *teaching*: pre-school teaching, elementary teaching, secondary general, secondary vocational (common core syllabus), and the teaching of children with special needs and gifted children;
 - ii) *finance and general administration*: administration, preparation and supervision of the budget, internal control, payroll, determining revenues to be collected (if the system requires a tax increase), board of trustees (whether elected or appointed), general management, corporate secretariat, orientation of educational programs and policies;
 - iii) *personnel*: administration, job descriptions, recruitment and selection of personnel (especially teaching personnel), professional development, assignment and salaries, staff evaluations;
 - iv) *material management*: administration;
 - v) *student services*: guidance (including orientation, psychological counselling, academic information, health services, pastoral care (if any), and extracurricular activities), enrolment criteria and attendance records, day-to-day supervision;
 - vi) *school-community relations*: parent committees, school committees, operation of community schools;
 - vii) *complementary activities*: library and audio-visual equipment;
 - viii) *programming*: development of programs that respond to minority needs and school evaluation;
 - ix) *evaluation and research*: teacher evaluations.

Principles

Does this model reflect the following principles:

1. homogeneity;
2. consolidation at the three decision-making levels: local, regional and provincial;
3. viable and equitable financing?

Intrinsic Reasons

Is this model capable, in spirit and form, of satisfying the intrinsic reasons that lead minorities to demand teaching and school management, i.e.:

1. cultivation of the minority community and modification of an historically disadvantageous situation;
2. acquisition of means of action to allow the minority to develop under its own momentum?

V. SUMMARY

1. INSTRUCTION AND SCHOOL MANAGEMENT BY OFFICIAL LANGUAGE MINORITY GROUPS

To understand the question of the recognition of the rights conferred by section 23 of the Canadian Charter of Rights and Freedoms, we discuss instruction and school management by official language minority groups under four headings:

- a) the reasons that lead minorities to demand their rights to instruction and school management;
- b) a definition of the term “management”;
- c) the objectives to be attained by official language minorities through control of school management; and
- d) obstacles to achieving the rights conferred by section 23 which are created by fears expressed about school management.

These issues are the backdrop to the other sections of the chapter: a description of the elements of school management and the principles underlying the choice by official language minorities of components to manage.

a. Reasons underlying demands for instruction and school management

Two primary reasons impel official language minorities to claim their rights to instruction and school management: (1) the cultivation of minority language and culture to ensure the survival and perpetuation of a linguistic group and so modify an historically disadvantageous situation; and (2) the acquisition of the means of action to develop under its own momentum.

1. Cultivation of minority language and culture through modification of an historically disadvantageous situation

Instruction and school management are essential to the vitality of minority language and culture. By “vitality” we mean the daily transmission and transformation of ways of life, ways of thinking and ways of speaking in the family and in local and regional settings so as to establish a new kind of collective behaviour.

The homogeneous minority school has a prime role to play because it is the place of instruction and management. Minorities use the school to transmit their language and culture and to transform this language and culture according to their needs.

Instruction and management thus contribute to the *modification of a situation which, historically and currently, has restricted the vitality of minorities.*

2. Acquisition of means to allow the minority to develop under its own momentum

In their demands, official language minorities are motivated by a second reason, in addition to the vitality of their language and culture: the wish *to acquire the means of action to develop under their own momentum.* Control of school management by the minority provides this means of action.

Minority groups subjected to the decisions of local school boards have presented a series of grievances indicating that they are sometimes badly served by majority language school boards.

By controlling their system of management, minorities can concentrate their time and energy on providing quality education.

b. A definition of school management

School management by official language minorities essentially means the implementation of an administrative structure uniting persons of a single minority language so that they can take decisions and wield influence for the benefit of the persons affected by the education (parents and community).

c. School management objectives

Official language minorities have four objectives in demanding control of school management:

1. Effective implementation of full rights

Under section 23 of the Canadian Charter of Rights and Freedoms, official language minorities have a right to independent management. The courts have so pronounced in Ontario, Alberta, Prince Edward Island and Saskatchewan.

2. Equal treatment

Equality of access to services can be attained for the minority only through the exercise of management by the minority.

3. Consolidation of forces of authority and influence with the persons affected

Consolidation under one structure promotes linguistic homogeneity. The structure holds together in a single linguistic group: (i) the forces of authority, (ii) the powers of influence and (iii) the persons on whom the authority and influence are exercised.

4. Decision-making on vital aspects of conditions of growth

Management provides control over essential issues such as the choice of teachers and programs, school-community relations and budgetary allocations.

d. Obstacles

Both minorities and majorities express certain fears which create obstacles to the development of a management system for official language minorities.

1. Management ability

The hiring of competent staff ensures the quality and effectiveness of school management for the minority as for the majority. Minorities need have no fear, therefore, that they are incapable of managing their own school system.

2. Fear of becoming second-class citizens

Minorities fear that by encouraging autonomy in teaching and management they may create second-class ghettos which will deny them full access to the resources of the majority. Experience demonstrates, however, that a strong minority identity leads to greater development of personal potential and hence to better access to existing resources.

3. Majority-minority divisions

Fear of division leads majorities to deny and minorities to refrain from demanding autonomy in teaching and management. A conciliatory attitude on the part of the majority, however, fosters unity and allows each group to develop.

2. COMPONENTS OF CONTEMPORARY SCHOOL MANAGEMENT

A detailed description of the school management system as it stands is given as a basis for undertaking informed development of a school management system that can endow official language minorities with the rights conferred by section 23 of the Charter. The following topics are discussed:

- a) contextual limits of school management
- b) components of school management, and
- c) decision-making levels, including their functions and the distribution of services.

a) Contextual limits of school management

School management by official language minorities is part of the existing provincial management system. It calls for certain changes within the system, but has no wish to transform the system altogether. Some of the system's components must be adapted to the needs and objectives of the minority. For this to be achieved, the existing school system must be visualized in its entirety and adapted to the needs of the minority.

The existing school system presupposes the existence of physical resources (premises, supplies, manuals), financial resources (a budget) and human resources (teachers).

The current system can be conceptualized through the idea of service and organized in terms of the needs and interests of its users.

b) Components of school management

The school management system affects nine areas of action or service. Each component involves particular activities.

1. *Teaching*

This component includes all the essential services established to dispense teaching to a diversified clientele: pre-school, elementary, secondary, adult, gifted, with special needs, vocational, special.

2. *Finance and general administration*

This component provides guidelines for management and permits full management of all the other components.

3. *Personnel*

This component ensures effective control and distribution of human resources, such as teachers, secretarial staff, administrative staff, janitorial staff, etc.

4. *Material management*

This component provides the necessary material support for teaching, administrative and student activities.

5. *Student services*

This component offers students and parents services which round out teaching. These include the cafeteria and residences.

6. *School-community relations*

This component includes mechanisms fostering understanding and communication between school and community.

7. *Complementary activities*

This component supports the library, audio-visual centre and computer centre.

8. *Programming*

An essential component, programming provides the content, rhythms and methods for teaching. It develops pedagogical programs.

9. *Evaluation and Research*

This last component nourishes the management system by providing quantitative and qualitative data on the educational system.

c. Decision-making levels: functions and distribution of services

At the *provincial* level, the *ministry of education* of each province ensures quality of education and guarantees equal access to teaching for every young citizen. It sets policy, legal, curriculum and financial frameworks and provides evaluation criteria.

At the *regional* level, *school boards* are organized like corporations. They manage resources and regional educational activities. They are responsible for the implementation of the nine components described above.

Because it affects the *school*, the *local* level is the most restricted decision-making level, but the one which most immediately affects the target group: parents and pupils. This clientele is the recipient of the service.

A final point: *the school system is open to its environment*, and changes at need. Historically, it is evolving toward the decentralization of services and greater local autonomy.

3. SCHOOL MANAGEMENT FOR OFFICIAL LANGUAGE MINORITIES

After a short summary, three principles or fundamental rules of operation are presented. The components of school management are then classified into essential components, components which can be shared, and optional components to help evaluate management models which have been proposed and to serve in the development of new models.

a. Short account

The judgments of the courts confirm the right to exclusive management under section 23 of the Charter.

Judge Purvis in *Mahé et al.* [1987] identifies five areas of management responsibility for the minority. These five areas involve the components which we identify as essential: teaching, finance and administration, personnel, programming and material management.

b. Principles to guide the development of management models

School management objectives should provide guidelines for choosing the necessary components for minority school management. Three principles stemming from these objectives affect decisions about the distribution of management components and the school structure which the minority should adopt.

1. *Homogeneity*

Homogeneity implies that every person involved in minority instruction, management or administration should *belong to the minority language and culture*. This means that decisions should be taken by and for minorities at all three decision-making levels: local, regional and provincial.

2. *Geographic consolidation*

Homogeneity depends on the *geographic consolidation* of the clientele eligible under section 23 of the Charter. Geographic consolidation contributes to effective management. The establishment of one or more regroupings requires:

- a) a flexible school-boundary map to consolidate the minority population;
- b) a preliminary consolidation around the school and the immediate community;
- c) regional consolidation;
- d) provincial consolidation, including the creation of a minority section in the ministry of education.

3. Adequate financing

Viable school management by official language minorities requires a *just and equitable distribution* of funds.

c. Distribution of management components for minorities

Components of school management for minorities are summarized in Table III-3. The components are categorized as: (1) *essential*, (2) *optional* and (3) *shared*.

The essential components of school management can be distributed across the three levels: *local, regional* and *provincial*.

Notes

- 1 See Chapter I.
- 2 Here are some other examples. These are opinions of Francophone parents in response to a survey. They provide good illustrations of the frustrations experienced. In the words of one parent, "The English-language school board did not understand our needs. We always had to negotiate to get the slightest thing. We have to be able to choose our own teachers and manage our own services." Or again, "Why management? To get the services we want instead of being subject to this ongoing battle... To have control, because Anglophones have no sympathy for our needs, for our school." "Management... to have programs that are truly French, because the majority doesn't understand our needs". (Dubé, 1988). [trans.]
- 3 The components are: (1) teaching; (2) finance and general administration; (3) personnel; (4) material management; (5) student affairs; (6) school-community relations; (7) complementary activities; (8) programming; and (9) evaluation and research. They are described in this chapter. See section entitled "Components of school management."
- 4 This extract, from transcripts of hearings by the Alberta Court of Queen's Bench, bears witness:

"The parents became, we have noted, more interested or more involved. They have a more direct involvement. And the interest of the parents for extracurricular activities, for example, has been noted. (...) We have also noted improved academic performance in general. We have noted that the results on standardized tests have increased. (...) We can also provide a better service in remedial teaching, for example, because we hire teachers in that field which are trained in French institutions, as compared to before...."
- 5 Section II of this chapter.
- 6 See especially essential management components for minorities in Section III of this chapter.
- 7 Inspiration for this section came, among other sources, from the theoretical and practical studies of Leclerc (1987) and Girard (1987).
- 8 For a description of the role of the orientation committees, see the section in Chapter IV on Quebec's linguistic school boards.
- 9 We found these objectives to be: (1) effective implementation of the rights conferred; (2) equal treatment for minorities and majorities; (3) consolidation of the forces of authority and influence with the persons affected by the authority and influence; and (4) decision-making by the minority on vital aspects affecting the conditions which allow it to develop.

CHAPTER IV

Existing and proposed organizational models

CHAPTER IV

EXISTING AND PROPOSED ORGANIZATIONAL MODELS

- I. TYPOLOGY OF EXISTING AND PROPOSED
 MODELS**
- II. SCHEMATIC PRESENTATION AND
 EVALUATION OF MODELS DEVELOPED FOR
 OFFICIAL LANGUAGE MINORITIES**
 - A. Advisory models**
 - 1. Optional advisory committees for minorities
 - 2. Protected advisory committees
 - B. Contractual models**
 - 1. Saskatoon contract (Saskatchewan, 1982)
 - 2. Proposal of the Edmonton Catholic School Board (Alberta, 1987)
 - C. Representational models**
 - 1. Direct representation (Ontario, 1984)
 - 2. Proportional and guaranteed representation (Ontario, 1986)
 - D. Models paralleling the majority structure**
 - 1. Language-based provincial school boards
 - a) Manitoba (1988)

- b) Prince Edward Island (1990)
- 2. Language-based local school boards in association with provincial general councils
 - a) Saskatchewan (1989)
- 3. The minority school board and the language-based regional school board
 - a) New Brunswick (1981)
 - b) Prince Edward Island (1987)
- 4. Language-based regional school boards
 - a) Ontario: the Metropolitan Toronto French-language School Board (1986)
 - b) Ontario: the Ottawa-Carleton French-language School Board (1988)
 - c) Quebec: language-based school boards (1988)

III. CONCLUSIONS

IV. SUMMARY

This chapter is devoted to a description and evaluation of models of school management by and for official language minorities. The models selected for analysis fall into two categories: (1) those actually in force and (2) those still at the proposal stage¹. When a model has undergone a number of transformations, as, for example, in having been previously introduced in a bill, we have discussed the most recent version. It should also be made clear that only models specifically developed for minority management are discussed. For this reason, the double boundary school maps currently in use to establish separate (denominational) school board jurisdictions in Newfoundland, Quebec, Ontario, Saskatchewan and Alberta have been excluded.

I. TYPOLOGY OF EXISTING AND PROPOSED MODELS

Each model was subjected to analysis under the three series of criteria described in the preceding chapter². At the end of this analysis, a typology of management models was established, based on the degree of management power held by the minority. All the models analysed may be classified under one or another of the following model types: advisory, contractual, representational or paralleling the majority structure. The results of the analysis are presented on the basis of this typology. As well, in order to present the results clearly, we go back to the management components analysis grid described in Chapter III. New codes are used in the "Category" column. The general codes "X" and "D" are followed by codes indicating the type of management (advisory, shared or subject to approval) and the level of responsibility (local, regional, provincial). "X" means that no decision-making power has been granted, while "D" means that full decision-making power has been granted. The codes are as follows:

- X: no decision-making power
- XC: no decision-making power: consultation (possible or obligatory)
- XR: decision-making responsibility subject to majority approval
- XS: shared decision-making power
- DL: decision-making power, local level
- DR: decision-making power, regional level
- DP: decision-making power, provincial level.

Before the evaluation proper, a short, schematic presentation of the management models analysed gives an overview of the situation and serves as a point of reference for the analytic section. The tables in this section provide a synthesis of the current situation in school management by and for minorities.

In Table IV-1, all the models (proposed or in force) are classified first in terms of type and then according to their geographic origin and in chronological order. The purpose of this table is to provide a clear overview, showing the progression of management powers in models developed for and by official language minorities. This summary table and the

analyses stemming from it are presented in the order of power conferred, from the models conferring the least power (advisory models) to those which give the minority complete autonomy by gathering together the decision-making power, authority and the persons affected in one single structure (models paralleling the majority structure).

Table IV-1

Typology of models in force and proposed for official language minorities

A. Advisory models

- | | | |
|----|---|-----------------|
| 1. | Optional advisory committees
<i>in force</i>
British Columbia
Alberta
Saskatchewan
Manitoba
Prince Edward Island
Nova Scotia
Newfoundland | <i>proposed</i> |
| 2. | Protected advisory committees
Ontario | |

B. Contractual models

- | | |
|--|-----------------------------------|
| <i>in force</i>
Saskatchewan (1982) | <i>proposed</i>
Alberta (1987) |
|--|-----------------------------------|

C. Representational models

- | | |
|---|-----------------|
| <i>in force</i> | <i>proposed</i> |
| 1. Direct representation | Ontario (1984) |
| 2. Proportional and guaranteed representation | Ontario (1986) |

D. Models paralleling the majority structure

- | | |
|--|--|
| <i>in force</i> | <i>proposed</i> |
| 1. Language-based provincial school board

Prince Edward Island (1990)* | Manitoba (1988) |
| 2. Language-based local school board in association with a provincial general council

Saskatchewan (1989) | |
| 3. Minority school board and language-based regional school board | New Brunswick (1981)
P.E.I. (1987)** |
| 4. Language-based regional school board
P.E.I. (1972)
New Brunswick (1981)
Ontario (1986)
Ontario (1988) | P.E.I. (1987)

Quebec (1988) |

* Model (1). See Table IV-3.

** Model (2). See Table IV-3.

The two following tables (IV-2 and IV-3) complement Summary Table IV-1. Table IV-2 lists, in chronological order, the models currently in force, and Table IV-3 deals with proposed models. These tables give, for each province, the title and the type of model, the name of the individual or organization making the proposal, and the date of the proposal and/or its promulgation.

Of the seven models in force in 1989 (one in New Brunswick, one in Saskatchewan, four in Ontario and one in Prince Edward Island), the New Brunswick model is the oldest. In 1981 the recommendations of the "Report of the Committee on the Organization and Boundaries of School Districts in New Brunswick" were implemented through the formation of language-based school boards and the establishment of minority school boards. A second model was implemented in 1982 in Saskatchewan, when parents of the École canadienne-française de Saskatoon signed an agreement with the Roman Catholic School Board of the City of Saskatoon. In Ontario in 1982, a report proposed the application of an original model: proportional and guaranteed representation. This model came into force when Bill 75 was promulgated in 1986. The regional school board model, moreover, was instituted twice in Ontario: in Toronto in 1986 and in Ottawa-Carleton in 1989. Finally, following the 1988 *Constitutional Reference*, the provincial school board model was implemented in Prince Edward Island in 1990.

Table IV-2

Summary of management models, by province
Models in Force

New Brunswick

Title of model:	<i>Report of the Committee on the Organization and Boundaries of School Districts in New Brunswick</i>
Type of model:	Paralleling the majority structure (1: minority school board and 2: language-based regional school board)
Proposed by:	Committee on the Organization and Boundaries of School Districts in New Brunswick (implemented by Schools Act).
Date of proposal:	1979
Date of promulgation:	1981

Saskatchewan

Title of model:	<i>Agreement between Le conseil de l'école canadienne-française de Saskatoon Inc. and The Board of Education of the St. Paul's Roman Catholic Separate School Division #20 of Saskatchewan</i>
Type of model:	Contractual
Proposed by:	St. Paul's Roman Catholic Separate School Division #20 of Saskatchewan
Date of proposal and of coming into force:	1982

Ontario

1) Title of model:	<i>French Language Advisory Committee</i>
Type of model:	Advisory
Proposed by:	Joint Committee on the Governance of French-Language Elementary and Secondary Schools, appointed by the Government of Ontario
Date of proposal:	April 1982
Date of promulgation:	10 July 1986

2) Title of model:	Bill 75
Type of model:	Representational (proportional and guaranteed representation)
Proposed by:	Joint Committee on the Governance of French-Language Elementary and Secondary Schools, appointed by the Government of Ontario
Date of proposal:	April 1982
Date of promulgation:	10 July 1986
3) Title of model:	<i>Preparing for the Future</i> (subsequent to Bill 75)
Type of model:	Paralleling the majority structure (regional school board)
Proposed by:	Government of Ontario, followed by the Metropolitan Toronto French-Language School Board
Date of proposal:	23 February 1988
Date of implementation:	1 January 1989
4) Title of model:	Bill 109
Type of model:	Paralleling the majority structure (Ottawa-Carleton French-Language School Board)
Proposed by:	Ottawa-Carleton French-Language Education Governance Advisory Committee
Date of proposal:	December 1986
Date of promulgation:	1 January 1989
<i>Prince Edward Island</i>	
Title of model:	School Act; Regulations Amendment No. EC 108/90
Type of model:	Paralleling the majority structure (language-based provincial school board)
Proposed by:	Government of Prince Edward Island
Date of proposal:	1984
Date of promulgation:	17 February 1990

Using the same headings as Table IV-2, Table IV-3 deals with proposed models. Six models are listed, in geographic order from west to east to provide an overview of the situation from one end of the country to the other. Each of these models will be evaluated using the procedure described above. Despite the efforts of minorities, no model has yet been produced by any of the following provinces and territories: Nova Scotia, Newfoundland, the Northwest Territories and the Yukon. British Columbia is drafting a model for four regional school boards.

Table IV-3

Summary of management models, by province

Proposed models

Alberta

Title of model:	<i>Management of Official Minority Language Education</i>
Type of model:	Contractual
Proposed by:	Edmonton Catholic School District
Date of proposal:	25 June 1987

Saskatchewan

Title of model:	<i>A Fransaskois Component for the Saskatchewan School System</i>
Type of model:	Paralleling the majority structure (local school boards in association with a provincial general board)

Proposed by:	Coordinating Committee for the Governance of Francophone Schools by Francophones
Date of proposal:	June 1989
<i>Manitoba</i>	
Title of model:	<i>La gestion des écoles: un modèle à suivre</i>
Type of model:	Paralleling the majority structure (provincial school board)
Proposed by:	Manitoba Ad Hoc School Management Planning Committee
Date of proposal:	January 1988
<i>Ontario</i>	
Title of model:	<i>Direct Representation of the Minority Language Group within the School Board</i>
Type of model:	Representational
Proposed by:	Minority Language Governance Study Committee
Date of proposal:	February 1984
<i>Quebec</i>	
Title of model:	Bill 107: Education Act
Type of model:	Paralleling the majority structure (language-based regional school boards)
Proposed by:	Government of Quebec
Date of adoption by National Assembly:	17 December 1988
<i>Prince Edward Island</i>	
Title of model:	<i>School Management in a Minority Francophone Setting on Prince Edward Island</i>
Type of model:	Paralleling the majority structure (1: regional school board and 2: minority school board)
Proposed by:	P. Arsenault at the request of La Société Saint-Thomas d'Aquin de l'Île-du-Prince-Édouard
Date of proposal:	1987

II. SCHEMATIC PRESENTATION AND EVALUATION OF MODELS DEVELOPED FOR OFFICIAL LANGUAGE MINORITIES

A. ADVISORY MODELS

In this section we analyse the advisory committee management model suggested by majorities to give official language minorities the right to present an opinion on the management of their educational programs. We begin by describing the importance of this model and its role from the majority's point of view. We then evaluate two types of advisory committees serving the minority: optional advisory committees (British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, Prince Edward Island and Newfoundland) and protected advisory committees (Ontario).

Advisory committees are a consultative and participatory mechanism of the majority education system: they form part of the school-community relations component. Usually

formed by a school board³ or a school, these committees function at two levels. The school advisory committee permits consultation at the school level and is made up of parents, students, the school principal and representatives of the teaching staff; and the parents' committee provides a consultative mechanism at the school board level, giving parents a means of direct contact with trustees. We shall look more specifically at this latter type.

No Canadian province or territory has a law to prevent the formation of parents' committees. Only Quebec, however, since 1971, has made the formation of school committees and parents' committees obligatory by law. These committees have precise functions. The school committee encourages parent participation, improves school services and makes recommendations to the administration on the quality of teaching and student services. The parents' committee coordinates the activities of the school committees, encourages parent participation, conveys the recommendations of the school committees to the school board and proposes improvements in school administration. In 1979 Quebec instituted another advisory mechanism for parents and the community: the "orientation" committee, through which parents can participate directly in the development of the school's pedagogical plans. The formation of orientation committees has been obligatory since the adoption of Bill 107 in 1988⁴.

The other Canadian provinces have left the creation of advisory committees to the discretion of school boards, or have remained silent on the subject. Nonetheless, in recent reviews of education, provincial governments have tended to encourage these committees by suggesting in school legislation and regulations that they be formed.

1. Optional advisory committees for minorities

The governments of British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia and Newfoundland encourage the Francophone official language minority to take advantage of advisory committees to participate in the management of French-language instruction. These committees remain optional everywhere, and are left to the discretion of the majority school boards. Francophone parents of Manitoba have made use of this committee structure for a long time and have developed a system of parents' committees united at the provincial level through a federation. Moreover, a Commission nationale des parents francophones (CNPF) is now developing contacts among various local and provincial committees from one end of the country to the other. These mechanisms certainly provide a means of exerting pressure, but still give the minority no decision-making power. Table IV-4 clearly shows that the minority can have no authority on decisions relating to vital aspects of conditions of growth, nor on any other decision, as indicated by the code, "XC: no decision-making power."

The advisory committee model is not, in fact, a management model. It is included here only because the Anglophone provinces tend to encourage it as way of responding minimally to the minority's demands for control of school management.

Advisory committees have several disadvantages. First, they do not provide the “degree of management” guaranteed under section 23 of the Charter. Only Judge Wimmer of Saskatchewan has recognized advisory committees as constituting an appropriate mechanism for the minority, and he countenances them only when minority language teaching is dispensed through single classrooms and not in separate institutions. When all decisions are taken by people who are not members of the official language minority, we may automatically conclude that this mechanism does not meet the requirements of paragraph 23 (3)(b). Full rights are not being implemented.

Treatment equal to that enjoyed by the majority is simply not an issue in this mechanism, because it disregards the community nature of education. In fact, the majority community manages its education mainly at the school board level, and not through school or parents’ committees. For equal treatment to exist, there must be a management system that represents the whole minority community. The school board structure permits this; the advisory committee structure does not.

There are other disadvantages. Advisory committees include members of the minority community at the local level only. Such groupings are too small to make independent management possible, because school management, as we have seen in the previous chapter, also takes place at the regional and provincial levels. Moreover, when parents are subject to the decisions of a group of majority origin, language-based homogeneity is not respected.

Table IV-4

School management model in force - Advisory committees

1. Teaching	C* a t.	2. Finance and general administration	C a t.	3. Personnel	C a t.	4. Material management	C a t.
Pre-school teaching	XC	Administration	X	Administration	XC	Administration	XC
• language, mathematics, music, social skills, art, science, motor skills, religion		Budget	XC	Work organization	XC	Supply	XC
Elementary teaching	XC	Internal control	XC	Recruitment and selection	XC	Shipping	XC
• regular		External control	X	Assignment and salaries	XC	Maintenance and repair	XC
• students with special needs/gifted		Payroll	XC			- buildings, grounds	
Secondary teaching	XC	Collection of revenue	XC	Evaluation	XC	Janitorial services	XC
• regular		Boards of trustees and boards of directors (election and/or appointment)	X	Accreditation (provincial)	X	Energy consumption	XC
• vocational		General management	XC	Professional development	XC	- heat, electricity	
- shops		Corporate secretariat	XC	Organizational development	XC	Leasing/construction of buildings	XC
- common-core syllabus		Debt servicing	X			Safety and security	XC
• students with special needs/gifted		Orientation of educational projects	XC			- insurance, surveillance	
• groups of special students		Policy	XC			School and municipal transfers	XC
Language-upgrading classes	XC	Informatics	XC			- exchanges of service	
Continuing education	XC					Electronic communications	XC
						- telephone, intercom	

5. Student services	C a t.	6. School-community relations	C a t.	7. Complementary activities	C a t.	8. Programming	C a t.	9. Evaluation and research	C a t.
Guidance	XC	Parent committees	DL	Library	XC	Program development	XC	Evaluation of student achievement	XC
• orientation		School committees	DL	Audio-visual	XC	School evaluation	XC	Evaluation of school system	XC
• psychological counseling		Community schools	XC	Computers and informatics	XC	Evaluation of teaching materials	XC	Teacher evaluation	XC
• academic information		Joint municipality- school board committee	XC			Program evaluation	XC	Research	XC
• health						Teacher training	XC		
• pastoral care						Ministry of education staff	X		
• student activities									
School enrolment	XC								
• admission									
• attendance									
Supervision	XC								
School transportation	XC								
• contracts									
• transfers									
Cafeteria	XC								
Loans and scholarships	XC								
Residences	XC								

*Decision-making power categories:

- X: no decision-making power
- XC: no decision-making power; consultation (possible or obligatory)
- XR: decision-making responsibility subject to majority approval
- XS: shared decision-making power
- DL: decision-making power, local level
- DR: decision-making power, regional level
- DP: decision-making power, provincial level.

In addition, advisory committees give the minority no financial autonomy.

The final disadvantage is the advisory committee model's failure to meet the two essential conditions of minority school management. First, it provides no way of ensuring the vitality of the minority because, in opting for the *status quo*, it makes no attempt to change a situation that does little to promote growth and development. Secondly, advisory committees do not provide the minority with a means of action that allows it to develop under its own momentum. On the contrary: advisory committees institutionalize impotence. The parents, being powerless, must constantly react to the decisions of school boards. The situation gives rise to many complaints:

- school boards do not understand the needs of the minority;
- school boards do not consult or, when they do, give no real consideration to suggestions and recommendations;
- minority parents must petition for everything from library books to school transportation;
- there is a constant atmosphere of confrontation between the board of trustees and the parents' committee;
- lack of funds becomes an excuse for school boards to maintain a minimal quality of services.

Advisory committees have proved to be mechanisms, therefore, for bogging the minority down in frustration. They are ineffective.

2. Protected advisory committees

Ontario's Bill 75 came into effect on 1 October 1986. It created French-language (or English-language) sections, as well as the Metropolitan Toronto French Language School Board⁵. With these two models proclaimed by law, Ontario's existing French-language advisory committees acquired a distinct and precise vocation. In effect, the Act defined conditions for the existence of advisory committees as partial models for management by the minority.

We call the Ontario committees "protected advisory committees" to distinguish them from those of other provinces. In other provinces, the committees are not created by law for the minority, whereas the Ontario committees must be formed whenever the following four conditions are met:

1. the board does not operate a French-language unit for dispensing instruction to the minority in schools;
2. the board has entered into an agreement with another board or boards to enable one or more pupils to receive instruction in French;
3. the agreement affects less than 300 pupils, less than 10% of the board's enrolment;

4. ten or more French-speaking ratepayers apply in writing (Bill 75, 5 (1) (a)-(a)).

These conditions limit the creation of advisory committees to separate and public school boards that do not offer French-language classes and that contract the services of neighbouring school boards. This situation occurs most frequently in central Ontario. But the Ontario Education Act obliges school boards to provide French-language teaching to children who are eligible under section 23. If the school boards must make contractual arrangements to do so, they can arrange purchase of services from other school boards, and then must form an advisory committee.

The advisory committee is made up of three members of the (majority) school board and six ratepayers representing the Francophone community and drawn from the localities involved. The members are elected at a meeting of Francophone ratepayers. The committee chairman sits as a member on the majority board of trustees and takes part in discussions on questions of French-language education. The chairman can also convey the recommendations of the advisory committee on how to meet the educational and cultural needs of Francophone pupils and the Francophone community.

This committee is more influential than the advisory committees described above, but it has no actual decision-making power. If the school board turns down a committee recommendation, however, it must give written reasons for its refusal. Table IV-5 lists the elements which, by law, must be submitted to the advisory committee for consideration.

There is another reason for describing Ontario's advisory committees as "protected". They have the right of appeal to the Languages of Instruction Commission of Ontario. This Commission is made up of five members appointed by the Lieutenant Governor in Council. At least two members must be Francophone and two Anglophone. The Commission considers the questions raised by committees or appoints a mediator.

The disadvantages of the advisory committees described above also apply to the model of Ontario's protected advisory committees. The Ontario committees satisfy neither the intrinsic reasons, nor the objectives, nor the principles of minority management. The act of establishing advisory committees where numbers are low actually encourages the minority populations most susceptible to assimilation to remain in this perilous situation.

Like the "unprotected" advisory committees, Ontario's advisory committees do not permit a sufficient degree of consolidation to meet the specific needs of the minority. Only a new grouping of Francophones could make it possible to establish French-language schools or classes, and so make other means of management available. But the Ontario school-boundary map is not based on linguistic criteria.

Furthermore, the special structure of Ontario's advisory committees places the seat of decision-making on minority issues at a level other than that at which consultation takes place. The committee makes its recommendations to a school board which does not itself offer instruction, but whose responsibility it is to negotiate the agreement or the contract for purchase of services. The advisory committee does not, therefore, deal directly with the organization providing the services.

By offering a partial guarantee of rights, the Languages of Instruction Commission of Ontario compensates up to a point for the disadvantages of advisory committees, but it turns the energy of the minority in a direction which distances it from power.

We may conclude that advisory committees do not meet the needs of the official language minority. They have the following disadvantages:

- this kind of management does not allow the minority to be effectively consolidated;
- it does not channel minority energy towards action; rather, it reduces the minority to impotence because it can do no more than react to circumstances;
- it does not in any way promote equal treatment;
- there is no independent funding;
- linguistic homogeneity is not respected.

Advisory committees are not in fact management models, but the ease with which they can be formed within the existing structure of the school system makes them a model frequently favoured by governments as a management formula for official language minorities.

Table IV-5

School management model in force – Protected advisory committee: Ontario (1986)

1. Teaching	C* # t.	2. Finance and general administration	C # t.	3. Personnel	C # t.	4. Material management	C # t.
Pre-school teaching	XC	Administration Budget Internal control External control Payroll Collection of revenue Boards of trustees and boards of directors (election and/or appointment) General management Corporate secretariat Debt servicing Orientation of educational projects Policy Informatics		Administration Work organization Recruitment and selection Assignment and salaries Evaluation Accreditation (provincial) Professional development Organizational development		Administration Supply Shipping Maintenance and repair – buildings, grounds Janitorial services Energy consumption – heat, electricity Leasing/construction of buildings Safety and security – insurance, surveillance School and municipal transfers – exchanges of service Electronic communications – telephone, intercom	
• language, mathematics, music, social skills, art, science, motor skills, religion					XC		
Elementary teaching	XC				XC		
• regular • students with special needs/gifted							
Secondary teaching	XC						XC
• regular – courses • vocational – shops – common-core syllabus • students with special needs/gifted • groups of special students			XC				
Remedial classes	XC		XC				
Continuing education							

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research	C a t.
Guidance	XC	DL	XC	XC	XC
• orientation	Parent committees	Library	Program development	Evaluation of student achievement	
• psychological counselling	School committees	Audio-visual	School evaluation	Evaluation of school system	
• academic information	Community schools	Computers and informatics	Evaluation of teaching materials	Teacher evaluation	XC
• health	Joint municipality-school board committee		Program evaluation	Research	
• pastoral care			Teacher training		
• student activities			Ministry of education staff		
School enrolment	XC				
• admission					
• attendance					
Supervision					
School transportation	XC				
• contracts					
• transfers					
Cafeteria					
Loans and scholarships					
Residences					

*Decision-making power categories: see below Table IV-4.

B. CONTRACTUAL MODELS

Two contractual models have been developed by majority school boards to permit the official language minority "a degree of management" of its educational programs. The first was implemented in Saskatoon in 1982. The second, developed in Edmonton in 1987, remained as a proposal involving La société des parents des écoles francophones d'Edmonton and the Edmonton Catholic School District. These two models, coming from adjoining provinces, have clear similarities.

1. Saskatoon contract (Saskatchewan, 1982)

In 1965, Francophone parents from St. Paul's School asked the Board of Education of the St. Paul's Roman Catholic Separate School Division #20 of Saskatchewan to provide religious instruction in French. After the Board's refusal, the parents organized a strike, withdrew their children from St. Paul's School and established a private school. This school is now an immersion school, the Saskatoon French School. The Francophone parents of St. Paul's School persisted in their demands to the Board, first to obtain transportation for pupils living at a distance and, second, to have this school recognized as a "designated school" for Francophones. In 1981, in view of the difficulties encountered with the Board, the parents asked the Minister of Education to give them a Francophone school and an autonomous school board. The Minister's answer came in January 1982: the parents should request these services from the existing school boards.

These events led to the opening of a Francophone school in 1982, and the signing of a contractual agreement between the Board and the Francophone parents of Saskatoon. This agreement was largely inspired by the agreement which had given two other schools⁶ the status of "affiliated schools" within the Board.

The contract which was signed between the parents of the school, united under the name, "Le Conseil de l'école canadienne-française de Saskatoon Inc.", and the Board of Education of the St. Paul Catholic School Division states on several occasions that:

The Board covenants and agrees to....provide to the Conseil for the operation of the School instructional and educational and related services, which include personnel, financial and administrative services. (p. 4)

The Board shall be solely responsible for the education and the discipline of students attending the School. (p. 6)

It also made it clear, again repeatedly, that the Board retained full authority over the services it would furnish to the minority: teaching programs, personnel, administration and budget. The Board agreed to consult the Conseil on these issues, but retained all final decision-making power. It is also worth noting that the agreement provided for the foundation of a joint committee of the two parties to "keep the lines of communication open". This

committee is made up of two Board trustees, two members of the Conseil and the executive director of the school board.

Table IV-6 lists the components open to consultation and those on which no minority consultation would take place. It reveals that the only autonomous decision Francophone parents could take was to select the name of the school.

Evaluation of this management model reveals that it resembles an advisory committee. This, at any rate, is the conclusion to which the Conseil de parents de l'école canadienne-française came after six years of joint administration with the Board (Conseil, *Brief*, 1988). The Conseil has no power to make decisions: it remains a pressure group. Its account of the many concrete difficulties it has faced includes:

- selection by the Conseil of teachers whom the Board then assigned to its other schools rather than to the École canadienne-française;
- late recruitment and inadequate teachers;
- lack of publicity directed to the Francophone public;
- unsafe, inadequate and cramped facilities, or facilities shared with the majority;
- sources of grants and funding unknown, making it impossible to establish informed budget priorities;
- decisions on evaluation and the rehiring of staff going counter to the recommendations of the Conseil;
- a program for language upgrading classes developed by the Board and not serving the needs of the minority;
- split allegiance of the teaching and administrative staff to the minority Conseil and the Board.

Table IV-6

School management model in force – Contractual agreement: Saskatoon (1982)

1. Teaching	C* a t.	2. Finance and general administration	C t.	3. Personnel	C a t.	4. Material management	C a t.
Pre-school teaching	XC	Administration Budget	X XC	Administration Work organization	X XC	Administration Supply	X XC
• language, mathematics, music, social skills, art, science, motor skills, religion		Internal control External control		Recruitment and selection	XC	Shipping	
Elementary teaching	XC	Payroll	X	Assignment and salaries	XC	Maintenance and repair – buildings, grounds	X
• regular		Collection of revenue	X	Evaluation	X	Janitorial services	
• students with special needs/gifted		Boards of trustees and boards of directors (election and/or appointment)	X	Accreditation (provincial)		Energy consumption – heat, electricity	
Secondary teaching	XC	General management Corporate secretariat	X X	Professional development	X	Leasing/construction of buildings	XC
• regular		Debt servicing		Organizational development	XC	Safety and security – insurance, surveillance	X
– courses		Orientation of educational projects	XC			School and municipal transfers	
• vocational		Policy	XC			– exchanges of service	
– shops		Informatics				Electronic communications	
– common-core syllabus						– telephone, intercom	
• students with special needs/gifted							
• groups of special students							
Language-upgrading classes	XC						
Continuing education	DL						

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research	10. Evaluation and research
Guidance	Parent committees	Library	Program development	XC	XC
• orientation	School committees	Audio-visual	School evaluation	XC	XC
• psychological counselling	Community schools	Computers and informatics	Evaluation of teaching materials	XC	XC
• academic information	Joint municipality-school board committee		Program evaluation	XC	XC
• health			Teacher training	XC	XC
• pastoral care			Ministry of education staff	XC	XC
• student activities				XC	XC
School enrolment				XC	XC
• admission				XC	XC
• attendance				XC	XC
Supervision				XC	XC
School transportation				XC	XC
• contracts				XC	XC
• transfers				XC	XC
Cafeteria				XC	XC
Loans and scholarships				XC	XC
Residences				XC	XC

*Decision-making power categories: see below Table IV-4.

The main cause of Conseil problems was a lack of information. The advisory management mode is based on an *ad hoc* dissemination of information. In this case, lack of information has led to "a climate of mistrust, apprehension and cynicism which, while deplorable, is nevertheless understandable". (Conseil, *Brief*, 1988, p. 18)

This management model adheres neither to the objectives of minority management, nor to the principles stemming from it, nor to the fundamental reasons for minority demands. Because it provides no power to make decisions on vital aspects of minority education, it does not conform to section 23 of the Charter. The minority community was not consolidated; the contractual agreement affected only the few parents with children at the school. The linguistic homogeneity of the decision-making levels was not respected because the Conseil worked at the local level and was not represented at the regional (school board) and provincial levels.

The Conseil itself, in a brief presented to the Minister of Education (1988), observed that implementation of the contractual model had caused energy to be wasted in a climate of mistrust:

The lack of resources and of authority for the Conseil is guaranteed to drain parents' energies and efforts, in an atmosphere of distrust and paralysing powerlessness. (1988, p. 27)

The disadvantages of the Saskatoon contractual model may be summed up as follows:

- full rights conferred by section 23 of the Charter have not been implemented. This model does not, moreover, provide a "degree of exclusive control";
- the quality of service provided does not allow the minority to enjoy a quality of education equivalent to that of the majority;
- no linguistic consolidation took place at the regional and provincial levels;
- decisions on vital aspects of education (including choice of administrative and teaching personnel, budgets, program development, leasing of the school, etc.) are taken by the majority school board;
- the model does not provide for the development of the official language community;
- parents' energies are spent in countering the decisions of the school board.

2. Proposal of the Edmonton Catholic School Board (Alberta, 1987)

In 1981 a group of parents from Edmonton, Alberta, asked the Minister of Education to establish a school and an independent school board for Francophones. The Minister advised the group to make its request to the majority Anglophone school boards. After the two Edmonton school boards⁷ turned down their request, the parents formed the Association Georges-et-Julia-Bugnet, founded a private school⁸ in 1983 and began legal proceedings.

The following year, the Edmonton Catholic School Board opened a school for the official language minority: École Maurice Lavallée.

In 1985 the Court of Queen's Bench of Alberta, in its judgment on the Association Bugnet case, *Mahé et al. v the Queen*, confirmed "a degree of exclusive management" for the minority. In June 1987, following this judgment, the Edmonton Catholic School Board made a proposal for a management model to the Société de parents francophones d'Edmonton (an organization bringing together the parents' committees of the École Maurice Lavallée and the École mixte J. H. Picard). The proposal was entitled: "A Proposed Model for the Management of Official Minority Language Education in the Edmonton Catholic School District as per the Canadian Charter of Rights: Section 23". This model claimed to continue the school board's traditional open spirit toward questions of instruction for the Francophone minority and thus to fulfil the requirements of the Charter. Largely inspired by the Saskatoon agreement, the model was submitted to public hearings at which French-language minority organizations participated. It was opposed strenuously by the Francophone community, and never came into effect.

In general, as the organization chart provided by the Edmonton Catholic School Board (Table IV-7) shows, the model proposed two systems of power. The first system, that of the Edmonton Catholic School Board (ECSB) and its whole administrative apparatus, remained entire. The second system, the marginal, Francophone system, was to be made up of the Société des parents des écoles francophones d'Edmonton and of a new committee, the French Language Education Council. This last committee was to include four members of the Société and one ECSB trustee, while the membership of the Société was to include all the parents of pupils at the École Maurice Lavallée and the École J. H. Picard. The majority system was to retain its decision-making rights; the minority system would have a role of consultation and responsibility.

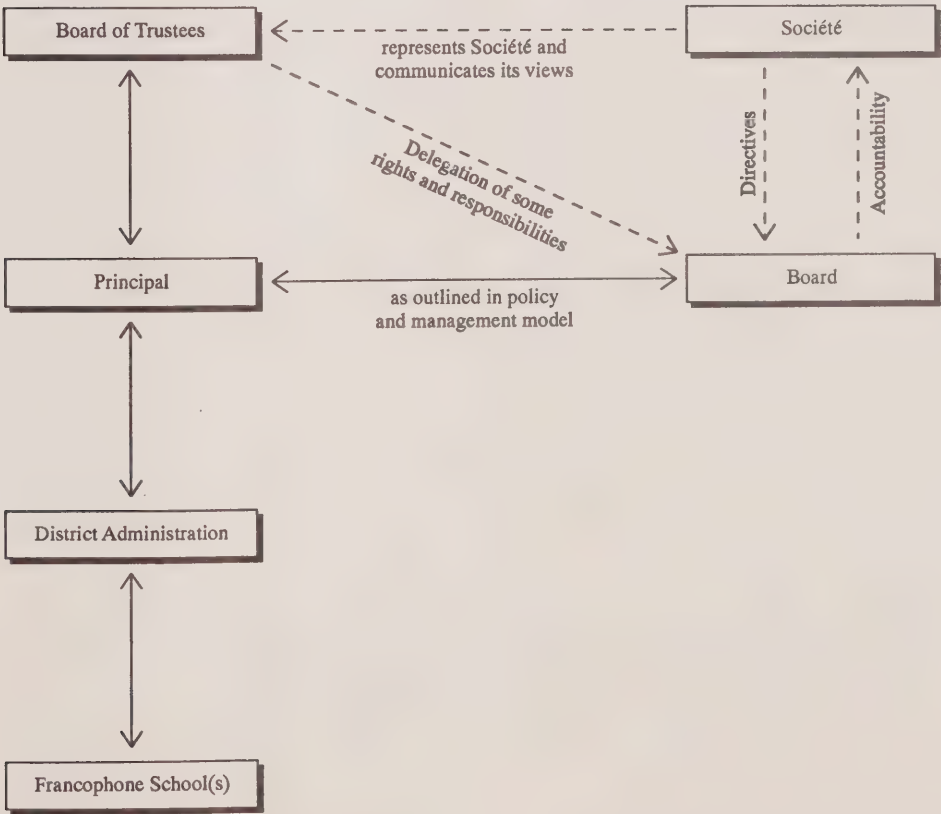
The components of the model may be summed up briefly. Basing itself on the Alberta School Act, 1980, the ECSB states in the opening paragraph of its proposal that it retains all rights and responsibilities with regard to *all* schools, personnel and pupils under its jurisdiction. Specifically, it:

- retains all responsibilities which cannot be delegated;
- appoints one single superintendent and one single secretary—treasurer for all its schools;
- adopts the total budget for the French Language Education Council;
- retains the right to allocate buildings and to define the sense of the words "appropriate facility";
- retains the right to act as an arbitrator in disputes between the superintendent and the Council;
- can withdraw one or all of the delegated rights and responsibilities;
- retains all the rights not specifically mentioned.

Since they are outside the decision-making structure, the Council and the Francophone parents' committee are, of course, subject to the ECSB. They have the following responsibilities:

- to control expenses within a budget “allotted and approved” by the ECSB and to assume responsibility for all costs incurred in the general administration of the school;
- with the approval of the ECSB and the mediation of the superintendent, to select administrative staff for the school;
- through the superintendent, to plan and manage teaching following the criteria established by the Minister of Education;
- with the mediation of the superintendent, to manage class openings and closings;
- to organize its own transportation system, or to come to some agreement with the ECSB.

Table IV-7
Minority official language education management
Organization chart (Alberta)



The insistence of the ECSB in claiming its rights may be viewed as showing some mistrust toward the official language minority and a certain reluctance to share its decision-making powers. Table IV-8 lists the services identified in the agreement. It shows that the Francophone minority does not control any of the essential components of management. In giving the parents' council some responsibility for decisions, the ECSB model is distinct from that of Saskatoon. It is nonetheless true that the official language minority is not given any power to make final decisions.

Evaluation of these contractual models in terms of the principles and objectives of school management for official language minorities reveals the disadvantages. In terms of principles, the CSB contractual model does not promote homogeneity. The French Language Education Council is split between the minority parents' Société and the Anglophone school board. The mandate of the Council is to represent and communicate the opinions of parents to the ÉCSB. Hence one school board trustee sits as an equal member on the Council. An intermediate level with ECSB representation is thus established in addition to the parents' Société. The principle of linguistic homogeneity is not respected in the practical application of decisions, because every Council or ECSB decision is implemented by a superintendent employed by the Anglophone school board. There is therefore no homogeneity for the minority either in terms of decision-making responsibility or in terms of school administration.

Table IV-8

Proposed school management model – Contract: Edmonton (1987)

1. Teaching	C* a t	2. Finance and general administration	C a t	3. Personnel	C a t	4. Material management	C a t
Pre-school teaching	XR	Administration	X	Administration	X	Administration	X
• language, mathematics, music, social skills,		Budget	XR	Work organization	X	Supply	X
art, science, motor skills, religion	X	Internal control	XR	Recruitment and selection	XR	Shipping	
Elementary teaching	XR	External control				Maintenance and repair	XR
• regular		Payroll	X	Assignment and salaries	X	– buildings, grounds	
• students with special needs/gifted		Collection of revenue	X	Evaluation	X	Janitorial services	X
Secondary teaching	X	Boards of trustees and boards of directors (election and/or appointment)	X	Accreditation (provincial)		Energy consumption	X
• regular		General management	X	Professional development	X	– heat, electricity	
– courses		Corporate secretariat	X	Organizational development	X	Leasing/construction of buildings	XR
• vocational		Debt servicing	X			Safety and security	X
– shops		Orientation of educational projects	XR			– insurance, surveillance	
– common-core syllabus		Policy	X			School and municipal transfers	
• students with special needs/gifted		Informatics				– exchanges of service	
• groups of special students		By-laws	X			Electronic communications	X
Language-upgrading classes	XR					– telephone, intercom	
Continuing education							

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research	C a t.
Guidance	Parent committees	Library	Program development	Evaluation of student achievement	X
• orientation	School committees	Audio-visual	School evaluation	Evaluation of school system	X
• psychological counselling	Community schools	Computers and informatics	Evaluation of teaching materials	Teacher evaluation	X
• academic information	Joint municipality-school board committee		Program evaluation	Research	
• health			Teacher training		
• pastoral care			Ministry of education staff		
• student activities					
School enrolment	DL				
• admission					
• attendance					
Supervision					
School transportation	XR				
• contracts					
• transfers					
Cafeteria					
Loans and scholarships					
Residences					

*Decision-making power categories: see below Table IV-4.

Minority consolidation, essential for school management, is also missing in this model. Francophones are not grouped together by a new school map which would allow parents from the outlying areas of Edmonton to enjoy the rights conferred by section 23. The model remains local and geographically limited. The Council, made up of the parents of pupils, is not representative of the minority community. Neither does this model, local in origin, provide for any provincial consolidation.

The funds transferred to the minority come from all the sources of funding available to the school board and are allocated on a per capita basis. Budget planning, moreover, is approved by the ECSB and takes no account of the special conditions of minority education. The transportation service, for example, must serve a school clientele scattered across the city of Edmonton and therefore requires supplementary sources of funding which are not given to the Francophone minority.

Does this model meet the objectives of school management for minorities? In reality, it gives the minority only slim authority within a management model which conserves for the ECSB its entire decision-making power over all delegated rights and responsibilities. The proposal, in scattered phrases, appears to delegate power to the minority, but an overview of the text shows that in reality these phrases mean nothing. The text is full of ambiguities: the responsibilities conferred with one hand are taken away with the other. This contractual model does not, therefore, meet the requirements of section 23 of the Charter.

Nor does this model come any closer to meeting the equal treatment objective. Delegation of powers denotes, *ipso facto*, the inferiority of those to whom the powers are delegated. In this case, it is possible even to doubt whether any delegation has in fact taken place: the ECSB retains ultimate authority and can on its own decision take the delegated powers back.

Can this model change a situation in need of reform? At the beginning, it recognizes the historic dimension of the issue, but it takes no appropriate measures to ensure that the Francophone minority can flourish. The minority remains in a position of reaction to a superior authority: the ECSB.

In short, the ECSB contractual model recognizes the presence of a Francophone minority in Edmonton, but provides no means of action to permit it to develop under its own momentum. The model, in fact, resembles a formal advisory committee. Francophone authorities unanimously rejected this model for the following reasons:

We want a minimum budget equal to that for other schools today. In reality, this model proposes an advisory committee to the administration. It gives more responsibilities to Francophones, but guarantees no real power.

At public hearings held by the Edmonton Catholic School Board in November 1987, Francophones expressed their disillusionment: "We were optimistic at the beginning because

of the open mind shown by the trustees. When the model was presented, however, the key elements of true management were missing". (Société, 1987, p. 1) [trans.]

The contractual agreements we have studied, from Saskatoon and Edmonton, come down unilaterally on the side of the majority school boards, which jealously guard their traditional decision-making powers. It appears, then, that this kind of management does not meet the needs of the official minority. We have been able only to predict the difficulties inherent in the model proposed in Edmonton, but we have witnessed the problems experienced by those exposed to the Saskatoon model. The Conseil de l'École canadienne française de Saskatoon (1988) concluded, moreover, that the Government of Saskatchewan should set up a provincial school board for the minority. For a contractual agreement between the local majority authorities and the members of the official language minority to be viable, there must be some provision, as was the case recently, for greater cooperation between the two parties and equal rights to quality services.

C. REPRESENTATIONAL MODELS

Representational models originated in Ontario. Before we proceed to a schematic description and evaluation, a brief historical survey of their evolution may be useful. The following models are studied: (1) the direct representation proposed in 1984 by the Minority Language Governance Study Committee and (2) the proportional and guaranteed representation implemented by Bill 75, promulgated on 10 July 1986. These models are designed, in brief, to make management available to the official language minority within Ontario's existing school structures.

In 1968, in Bill 140 and Bill 141, the Government of Ontario recognized the legitimacy of French-language elementary and secondary schools. At that time the government gave English-language school boards the additional responsibility of managing French-language schools. Problems began to arise in the early 1970s, and in 1975 the question of the management of official minority schools became provincial in scope. In 1977 the Mayo Commission, charged with investigating the situation in Ottawa-Carleton, recommended that a homogeneous Francophone Catholic school board be created. Shortly afterwards, the government refused to create this structure. In 1981 a report of the *Enquête sur l'éducation au niveau secondaire* recommended the creation of new management structures to meet the local needs of the official minority. The idea was thus launched that the creation of a structure different from the school board system would be preferable as a way of responding to the needs of the Francophone minority.

Published in 1982, the *Report of the Joint Committee on the Governance of French-Language Elementary and Secondary Schools* proposed a structure based on one principle and three administrative measures:

Principle: recognition of the right of every Francophone to instruction in his/her own language.

Administrative Measures:

1. creation of minority language sections with their own linguistic representation, decision-making power and budgetary control;
2. amalgamation of the four Ottawa-Carleton school boards into two;
3. management of French-language educational services in Toronto by four trustees.

The committee report was subjected to deliberation, modifications and counter-proposals. In 1986 it became Bill 75.

In 1984, the Minority Language Governance Study Committee, under the chairmanship of Marilyn Sullivan, summarized the options that had been considered for entrusting the management of educational services to the Francophone minority: (1) advisory committees, (2) the Minority Language Education Council, (3) proportional and guaranteed representation, (4) direct representation and (5) a homogeneous school board⁹. In this section, we describe and evaluate the two representational models.

1. Direct representation (Ontario, 1984)

The direct representation model proposed in the study entitled *Final Report of the Study Committee on the Governance of Minority Language Education* bases representation for members of the minority on the ratio of the value of residential and rural properties belonging to the linguistic group to the total value of properties in the region's majority school division. Representation by a minimum number of four trustees on the division's school board is guaranteed, the total number of trustees remaining unchanged. Within this management structure, "minority language trustees have exclusive decision-making power on matters to do with the allocation and use of special grants allotted to the minority language group" (p. 16) [trans.].

The direct representation model is wholly based on economic realities: on an evaluation of the properties of the minority and not on rights to education. It is unacceptable from the outset, therefore, with respect to rights conferred by section 23 of the Charter. Moreover, the exclusive management sectors apply only to special grants to the minority. Management is permitted, therefore, only of the peripheral components of minority education. The Sullivan Committee admits that this model is inadequate. Its structure provides, however, an ideological transition from the advisory models to the model of proportional and guaranteed representation to be implemented under Bill 75.

2. Proportional and guaranteed representation (Ontario, 1986)

In the proportional and guaranteed representation model which Bill 75 put in place in 1986, minority language "sections" (French or English) must be formed whenever one of the following two conditions prevails: (1) where a school board operates minority classes or

schools; or (2) where it purchases services for a minority comprising more than 300 pupils or 10% of the student population. This model ensures representation within existing structures without changing the school boundary map.

The number of trustees for the minority language section is calculated under the following formula which, as its name indicates, is both proportional and guaranteed:

Proportional: the number of members of the minority language section bears the same ratio to the total number of elected members of the board that the number of minority language resident pupils of the board bears to the total number of resident pupils.

Guaranteed: a minimum of three minority representatives is guaranteed.

The board of trustees retains the same number of members that it traditionally has had in the region, unless the number of minority trustees calculated on the basis of representation is fewer than three. In this case, the total number of trustees is increased by the difference. Minority trustees, to be elected, must conform to the same eligibility requirements as the majority trustees. They must also possess the rights conferred by subsections (1) and (2) of section 23 and choose to vote only for members of the minority language section.

Bill 75 identifies the decision-making areas reserved exclusively for members of the minority language section. They are:

- the planning and establishment of French-language instructional units, including the preparation and submission of capital expenditure forecasts;
- the administration and closing of French-language instructional units;
- the formation of admission committees;
- the planning, establishment, implementation and maintenance of programs and courses for pupils enrolled in a French-language instructional unit;
- the recruitment and assignment of teachers and administrative and supervisory personnel for French-language instructional units; and
- entering into agreements with other school boards. (p. 14)

All areas other than these are decided jointly by the minority and the majority. The Act specifies the following matters as subject to joint decisions taken on centralized services:

- salaries, benefits and professional development of employees, excluding employees governed by the minority section;
- the maintenance and operation of services and equipment required for school buildings;
- school supplies other than instructional and learning materials;
- transportation;

- reserve funds and working funds;
- head offices including services operated therefrom; and
- permanent improvements other than the replacement for schools and classes of furniture, furnishings, library books and instructional equipment and apparatus. (p. 17)

All these components are listed in Table IV-9, which also indicates the decision-making level to which each belongs: power shared between the majority and the minority (XP); or minority decision-making power at the local/regional level of minority language sections (DL).

Since the proportional and guaranteed representation model has been in effect since Bill 75 was promulgated, it has already been the subject of user-evaluation. The objections expressed focus primarily on the ambiguity and interpretation of the exclusive and shared fields, and on the repercussions that these interpretations have on budgets. Rouleau (1988), for example, observes that the funds to hire experts such as architects and lawyers, for professional fees, and for meeting expenses should come from the central budget, but in actual fact come from the exclusive jurisdictions: this serves to create much confusion and conflict.

Table IV-9

School management model in force – Proportional and guaranteed representation: Ontario (1986)

1. Teaching	C* a t.	2. Finance and general administration	C a t.	3. Personnel	C a t.	4. Material management	C a t.
Pre-school teaching	DL	Administration	XS	Administration	XS	Administration	XS
• language, mathematics, music, social skills, art, science, motor skills, religion		Budget	DL/XS	Work organization	DL	Supply	XS
		Internal control	XS	Recruitment and selection	DL	Shipping	XS
		External control	XS			Maintenance and repair	XS
Elementary teaching	DL	Payroll	XS	Assignment and salaries	DL	– buildings, grounds	
• regular		Collection of revenue	XS	Evaluation	XS	Janitorial services	XS
• students with special needs/gifted		Boards of trustees and boards of directors (election and/or appointment)	XS	Accreditation (provincial)	XS	Energy consumption	XS
Secondary teaching	DL	General management Corporate secretariat	XS XS	Professional development	DL	– heat, electricity	
• regular		Debt servicing	XS	Organizational development	XS	Leasing/construction of buildings	XS
– courses		Orientation of educational projects	DL			Safety and security	XS
• vocational		Policy	XS			– insurance, surveillance	
– shops		Informatics	XS			School and municipal transfers	
• students with special needs/gifted						– exchanges of service	
• groups of special students						Electronic communications	XS
Language-upgrading classes	DL					– telephone, intercom	
Continuing education	DL						

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research
Guidance	Parent committees	Library	Program development	Evaluation of student achievement
• orientation	School committees	Audio-visual	School evaluation	Evaluation of school system
• psychological counseling	Community schools	Computers and informatics	Evaluation of teaching materials	Teacher evaluation
• academic information	Joint municipality-school board committee		Program evaluation	Research
• health				
• pastoral care				
• student activities				
School enrolment	Agreements with other school boards			
• admission				
• attendance				
Supervision				
School transportation				
• contracts				
• transfers				
Cafeteria				
Loans and scholarships				
Residences				

*Decision-making power categories: see below Table IV-4.

Moreover, members of minority sections have no control over central personnel. The key person in this area is the director general. Although the board of trustees may impose a person who is less than sympathetic to the needs of the minority, it is this person nonetheless who will manage the administration of minority and majority educational services. The same is true for the administration of personnel and material management services, of janitors and even of bus drivers.

It should also be noted that Bill 75 takes no account of the need for adequate funding to offer services of the same quality as the majority's. School busing, for example, may be more expensive for a minority spread over a larger territory: there is, however, no funding arrangement to remedy this situation. Moreover, the Act does not clearly state that minority sections have the power to establish and administer a budget. (Rouleau, 1988, p. 3)

There are also major difficulties with respect to the electoral lists for school trustees and how well the lists represent the minority. Bill 75 requires citizens eligible under section 23 to declare their wish to participate in the election of minority trustees. Any person not explicitly presenting himself or herself as a Francophone is declared a member of the majority. This has the effect of reducing the minority population base. Residents, moreover, may send their children to minority schools or classes without voting for minority representatives and without even contributing taxes. The system remains centred, therefore, on formulas and structures serving the majority. As a result, the minority cannot exercise its right to instruction and management automatically, as members of the majority can.

As indicated in Table IV-9, the proportional and guaranteed representation model does not protect the components essential to the vitality of the minority. The minority, therefore, does not control the following vital elements:

1. *finance and general administration*: administration, preparation and supervision of the budget, internal control, payroll, determining revenues to be collected (if the system requires a tax increase), board of trustees or the persons who are elected or appointed, general management, the corporate secretariat and policies;
2. *personnel*: administration, professional development, payment of staff;
3. *material management*: administration.

The most crucial component, finance and general administration, is precisely the one which is almost entirely subject to shared decision-making. It should also be noted that within this model, all shared decisions must be submitted for majority approval, since Anglophone trustees form a majority on the board.

In short, the model of proportional and guaranteed representation does not meet the majority's requirements for cultural and linguistic development. The minority does not

control the vital elements. Because of the funding formula, it cannot be assured of treatment equal to that of the majority. It is not consolidated in a homogeneous way at the school board level. Its geographic consolidation is always subordinate to majority norms: a double boundary school map to group the minority in a distinct way, cutting across majority boundary lines, has not been established.

Even if this model is a solid improvement over advisory committees, it nonetheless keeps the minority in a position of impotence in decisions it must share with the majority. These decisions have fundamental repercussions on minority education.

In short, the disadvantages of proportional and guaranteed representation in Ontario area as follows:

- failure to implement treatment for the minority equal to treatment of the majority;
- failure to consolidate members of the official language minority under one, single homogeneous structure;
- failure to give the minority the exclusive power to make decisions on all elements vital to its development;
- lack of clarity in funding arrangements.

Ontario's Francophone minority recognizes that the model of proportional and guaranteed representation does not implement the full rights conferred by section 23. That is why, in January 1990, six Francophone associations announced their intention of taking the Government of Ontario to court. Bill 75, they say, is unconstitutional because it does not enable the situation of Ontario's Francophones to improve.

In 1984 the Ontario Court of Appeal stated that, hypothetically, the fields of exclusive management proposed in the White Paper on which Bill 75 is based were necessary. After experiencing this model of school management, however, the Franco-Ontarian community has developed a better understanding of what constitutes effective management and can thus share their views with the authorities.

This evolution suggests that models which try to respond to the needs of the minority without changing the provincial educational structure are sooner or later doomed to failure. It is more and more evident that the management system must be planned in terms of the particular needs of the minority. The representational models were another stage in this process.

D. MODELS PARALLELING THE MAJORITY STRUCTURE

The term "models paralleling the majority structure" refers to models which from the outset give members of the official language minority full and complete management, as enjoyed by members of the majority community. These models are all based on the school board

concept because that is the best known structure for managing educational services in every province of Canada. This section therefore includes descriptions and evaluations of the following kinds of school board: provincial, local and minority regional.

1. Language-based provincial school boards

To deal with the need to consolidate a small population spread over a large area, Manitoba proposed a provincial school board whose territory encompassed the entire province. Another province, Prince Edward Island, implemented this model in 1990.

In general, the school board acts as a legal and administrative unit: it brings together parent representatives and those of the official language minority and assumes responsibility for coordination at the provincial level. Under its governance and at the local level, school committees oversee the day-to-day management of minority education. Each model is unique in its own way and offers particular advantages and disadvantages, which we will now evaluate.

a. *Manitoba (1988)*

In Manitoba, a Comité directeur des structures scolaires (CDSS) was formed from the union of five Francophone organizations¹⁰. In 1987 this committee appointed an *ad hoc* committee of six members and two employees to develop a management model for Franco-Manitoban schools. The results appeared in January 1988, in a document entitled “La gestion des écoles: un modèle à suivre”.

The work of the committee began from the circumstances of 1988:

Under the present structure, parents and their committees play a very limited role, which changes from one region to another. Managers consult with parents from time to time, sometimes merely to pacify them, to avoid public reaction that might endanger social harmony. When the local or divisional structure refuses to give parents' committees a part to play, the committees become pressure groups willy-nilly. In this context, gains made by the minority are sometimes seen as the result of subversion. (p. 31 [trans.])

The management model proposed as a remedy for the difficulties of the present system is a provincial school board to manage educational services for the official language minority. Its geographical territory will encompass the entire province. The model is based on ten fundamental principles:

- equality;
- the right to French-language instruction;
- the right to autonomous facilities;
- the right to manage minority facilities;
- the right to catch-up measures;

- the right to education of a quality equal to the majority's;
- the right to fair and equitable funding;
- local and regional autonomy;
- the school at the service of the community; and
- recognition of earlier gains.

The organization charts in Tables IV-10, IV-11 and IV-12 show that the exercise of power is divided among three levels: provincial, regional and local. It is stated at the outset that the provincial school board has the same powers as the other school boards of the province. It is made up of 11 trustees elected by voters eligible under section 23 and empowered under Manitoba's electoral laws to vote in four minority zones, the boundaries of which are defined in the model, for two trustees from the west, two from the centre, five from the urban area and two from the east (Table IV-10). The election modalities are not developed in the document describing the proposed model.

Table IV-10
Management model: the political process
Organization chart (Manitoba)

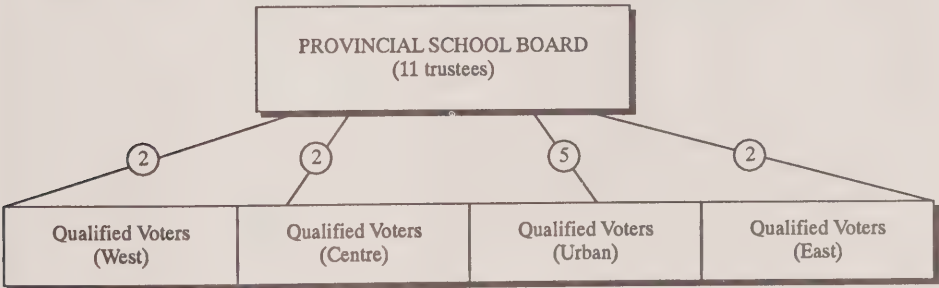
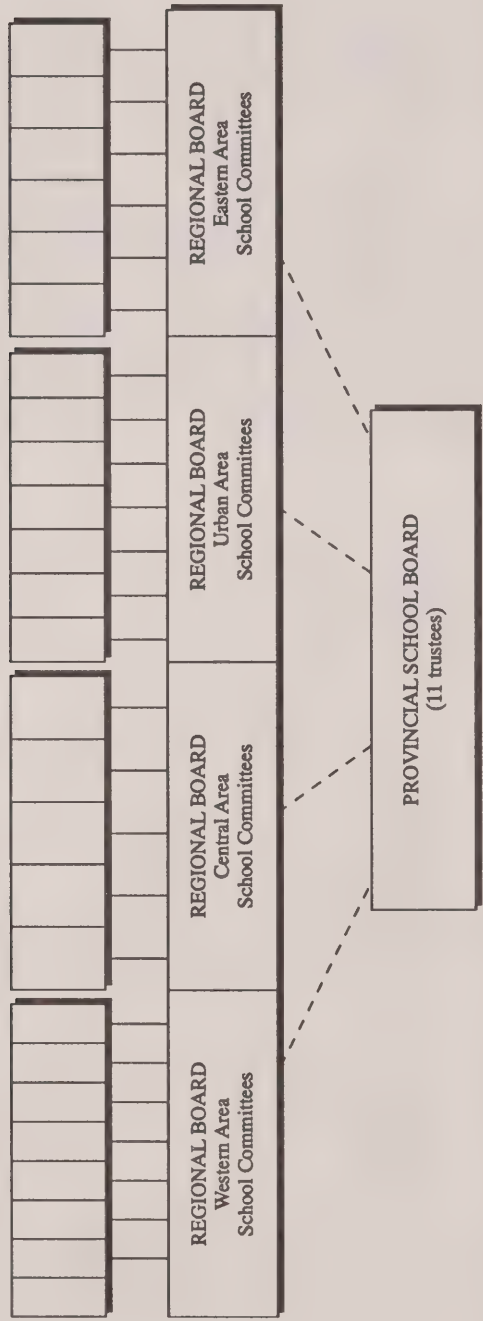


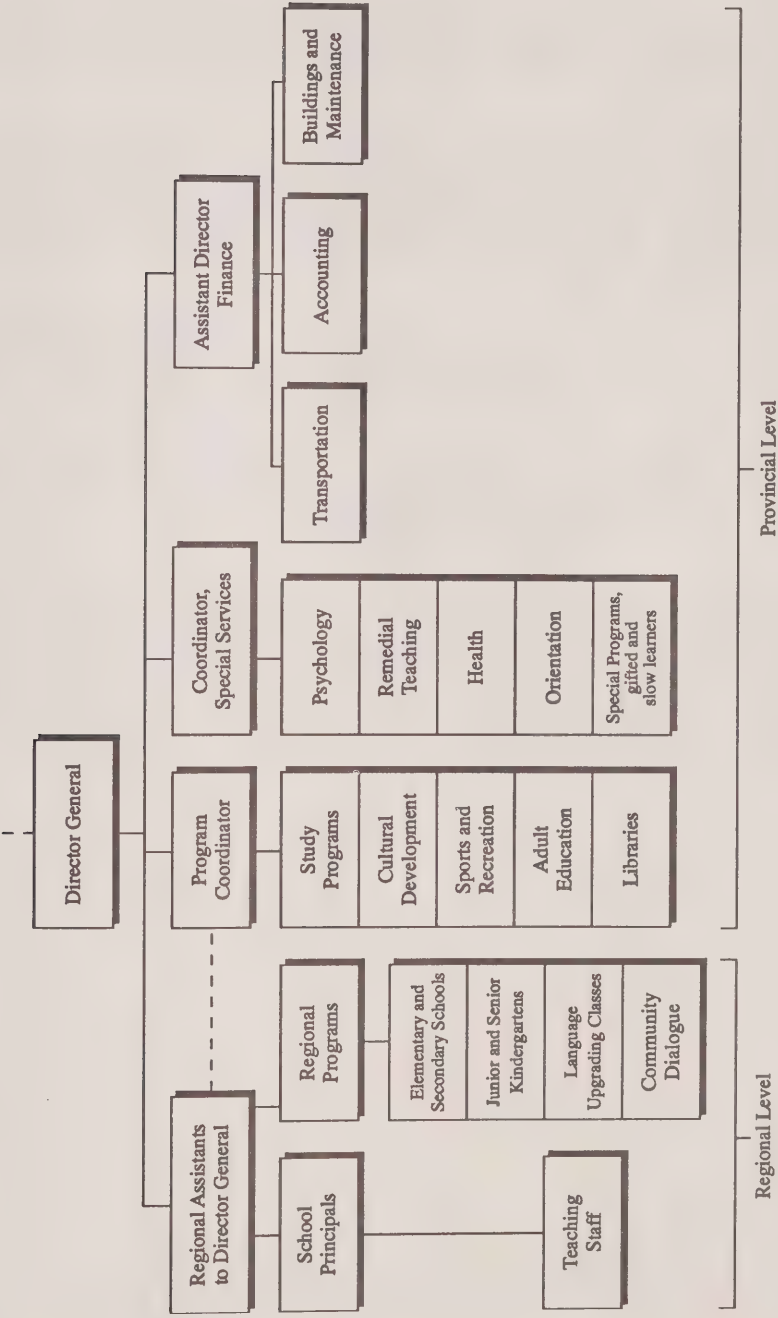
Table IV-11
Management model: the consultative process
Organization chart (Manitoba)

SCHOOL COMMITTEES*



* A school committee for Franco-Manitoban schools designated by the French-language Education Office.

Table IV-12
Administrative organization chart (Manitoba)
Provincial School Board



At the provincial level, the school board hires a director-general, program coordinators, coordinators of special services and an assistant director for finance (Table IV-12: administrative process).

The four regional councils of school committees include one delegate from each school committee, two provincial trustees from the region and the regional assistant to the provincial director general. The role of the council is to define the needs of the region and to represent the region on the provincial school board. It participates in the selection process for the regional assistant director.

The school committee consists of the principal, parent representatives and a student representative. Its function is to present the local viewpoint to the regional council. It helps in selecting the school principal and in establishing guidelines for the direction of the school.

Three funding options are formulated: general government grants, introduction of a special tax by municipalities, or authorization of the provincial school board to collect taxes. By whatever means, the model demands equitable funding.

Table IV-13, by recapitulating the management components described in the model, shows that the decision-making jurisdictions are not clearly defined. It indicates components managed by the minority at the local (DL), regional (DR) and provincial (DP) levels. This division of the decision-making power is described in terms of "participation" among the three levels: local, regional and provincial. What does participation mean? Is it a delegation of powers to the various levels, or is it a mode of consultation? Who makes the final budgetary decisions? The Manitoba model is silent on this point.

5. Student services	C a t.	6. School-community relations	C a t.	7. Complementary activities	C a t.	8. Programming	C a t.	9. Evaluation and research	C a t.
Guidance		Parent committees		Library		Program development	DP	Evaluation of student achievement	
• orientation	DP	School committees	DL	Audio-visual		School evaluation		Evaluation of school system	
• psychological counseling	DP	Community schools		Computers and informatics		Evaluation of teaching materials		Teacher evaluation	
• academic information	DP	Joint municipality-school board committee				Program evaluation		Research	
• health						Teacher training			
• pastoral care		Community involvement	DR			Ministry of education staff			
• student activities									
School enrolment									
• admission									
• attendance									
Supervision									
School transportation	DP								
• contracts									
• transfers									
Cafeteria									
Loans and scholarships	DP								
Sports and recreation	DP								
Residences									

*Decision-making power categories: see below Table IV-4.

The consolidation effected by the Manitoba model satisfies the need for linguistic homogeneity for those participating in minority school management. However, although this type of management creates three levels of assembly, all necessary, it does not delegate true responsibility to the local and regional levels. In fact, the regional level becomes something of an empty vessel because the provincial trustees do not come from this committee. Consolidation at different levels is important in principle, but the structure still needs some adjustment to establish true decision-making bodies. It is in giving the minority board all the rights and responsibilities of the other school boards of the province that the Manitoba provincial model potentially provides all the elements the minority needs to develop.

In short, the Manitoba model proposes an innovative minority school management structure. Its greatest virtue lies in the consolidation of the energy of the minority on a number of levels. Its strength becomes a weakness, however, in that the decision-making levels still need to be equitably balanced and a true management mechanism has to be provided at the local level. At present the system is weighted in favour of the provincial level to the detriment of the regional and local levels. In its spirit and in the development of its principles, it precisely and articulately promotes minority development by endowing the minority with the strength to act.

Franco-Manitobans express some fears over the divergence of needs between urban and rural areas. They mention the huge spaces and long distances that may transform rural residents into second-class citizens, a neglected population, the last-served. They may also fear that little attention will be paid to them in a centralized system, their representation on the provincial board being insufficient to ensure that they are clearly heard. There is a risk that local autonomy will disappear and local problems will remain unresolved. (Dubé, 1988, p. 12)

b. *Prince Edward Island (1990)*

The main characteristic of the provincial school board model implemented in Prince Edward Island in 1990 is the extension of the front portion of the Unit 5 territory on the west side of the island, which is known as Evangéline and serves the Francophones concentrated in the region. The model establishes a school board which has the whole province as its geographic territory.

In 1984 the Société Saint-Thomas d'Aquin asked Messrs. Lionel Desjarlais and Pierre Michaud to carry out a study which would allow the society to negotiate minority rights with the Ministry of Education. The technical report, entitled "Attentes et aspirations des Acadiens de l'Île-du-Prince-Édouard en matière d'éducation", attempts to serve the needs of a population spread across the whole island¹¹. It makes two recommendations:

1. to extend the school board's jurisdiction from Unit 5 (Evangeline Region) to all Francophones, wherever they may live in the province; and

2. to create within the Ministry of Education a French-language teaching division. (p. 3)

The report thus proposes a provincial management model for the minority.

This provincial management model recognizes, among other things, the preponderant role played by the Ministry of Education “in programming, pedagogic leadership and funding.” It proposes that a “French-language teaching division” be created in the Ministry and that it come under the direct authority of the deputy minister of education. To guarantee the quality of French-language education, this section would include administrators, a teaching advisor, an educational psychologist and a specialist in educational technology. It would ensure a Francophone voice in day-to-day administrative and pedagogical decisions made within the Ministry. This part of the recommendation was dropped when the provincial school board was established.

According to a study (Arsenault, 1988) which followed the report by Messrs. Desjarlais and Michaud, 40% of Prince Edward Island Francophones recommend this model of management.

Following the decision in the *Constitutional Reference* which gave the minority the right to participate, the Government of Prince Edward Island passed amendments to the School Act. These regulations led to the establishment of the provincial school board model suggested previously. The board is headquartered in Abrams Village [6.04 (3)] and its language of operation is French [6.04 (2)]. The school board of Unit 5 thus accepts responsibility for French-language instruction:

6.05 (1) The French school board shall have jurisdiction over and administer French language instruction in the province in accordance with the Act and the regulations.

The powers and responsibilities of the Francophone minority’s provincial school board are the same as those of the division boards described in sections 13 to 36 of the School Act. The Francophone school board has the added responsibility of starting up French-language classes wherever the need is demonstrated and/or providing transportation to its classes or schools.

The Francophone school board of Unit 5 must also inform parents about programs that are, or are to be, offered in French. It plans every new offer of services, but each offer must be approved by the Minister. The designation of new French-language schools is the responsibility of the Minister.

The representativeness of the school board is established through the election of eligible persons:

- resident, aged 18 or over; and
- parent of a child who is receiving French-language instruction or parent of a child eligible under section 23 or person whose child would be eligible if such person had a child.

The board of trustees has ten members elected from the administrative region formerly known as Unit 5, Evangeline, and five other elected members.

In Prince Edward Island, Francophone minority education is financed in the same way as majority education: through government grants.

An evaluation of this model according to the principles and objectives already established reveals that homogeneous linguistic consolidation has been respected. When a province is small, there is a major benefit to consolidating its entire Francophone population. The model overlooks, however, the regional and local levels, and gives schools no local autonomy. This may have consequences when there are classes and schools in all counties throughout the province. The provincial level within the Ministry of Education is also, for the present, ignored. Because the provincial Francophone school board is in possession of all the powers devolving under the School Act, the model puts all decision-making power into the hands of the minority (Table IV-14), always excepting the powers that remain with the Ministry: approval of new classes and of a new transportation network, and the designation of French-language schools. The elements essential to the development of the minority have thus been acquired, but lack concrete form.

With respect to principles (development of the minority and a structure providing for positive action), the model could potentially implement the rights conferred by section 23 of the Charter. It could give full management power to the minority. One aspect, however, could be improved, that of local autonomy.

The model has the following *advantages*: geographic consolidation of a small population in a large territory; decision-making power over essential aspects of minority education; increased strength to act.

It has, on the other hand, the following *disadvantages*:

- failure to ensure local autonomy;
- requirement of Ministry approval for new offers of service from the Francophone school board;
- lack of any provision for a unit within the Ministry of Education.

Table IV-14

School management model in force – Parallel to majority structure: Prince Edward Island Provincial School Board (1990)

1. Teaching	C* a t.	2 Finance and general administration	C a t.	3. Personnel	C a t.	4. Material management	C a t.
Pre-school teaching		Administration	XS	Administration	XS	Administration	XS
• language, mathematics, music, social skills, art, science, motor skills, religion		Budget	XS	Work organization		Supply	
		Internal control	XS	Recruitment and selection		Shipping	
		External control	XS	Assignment and salaries		Maintenance and repair	XS
Elementary teaching	XS	Payroll				– buildings, grounds	
• regular		Collection of revenue	X	Evaluation		Janitorial services	
• students with special needs/gifted		Boards of trustees and boards of directors (election and/or appointment)	XS	Accreditation (provincial)		Energy consumption	
Secondary teaching	XS			Professional development		– heat, electricity	
• regular		General management	XS	Organizational development		Leasing/construction of buildings	
– courses		Corporate secretariat				Safety and security	
• vocational		Debt servicing				– insurance, surveillance	
– shops		Orientation of educational projects	XS			School and municipal transfers	
– common-core syllabus		Policy	XS			– exchanges of service	
• students with special needs/gifted		Informatics				Electronic communications	
• groups of special students						– telephone, intercom	
Language-upgrading classes							
Continuing education							

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research
C a t.	C a t.	C a t.	C a t.	C a t.
Guidance	XS	Library	XS	Evaluation of student achievement
• orientation	Parent committees	Audio-visual	Program development	Evaluation of school system
• psychological counselling	School committees	Computers and informatics	School evaluation	Teacher evaluation
• academic information	Community schools		Evaluation of teaching materials	Research
• health	Joint municipality-school board committee		Program evaluation	
• pastoral care			Teacher training	
• student activities			Ministry of education staff	
School enrolment				
• admission				
• attendance				
Supervision				
School transportation	XS			
• contracts				
• transfers				
Cafeteria				
Loans and scholarships				
Residences				

*Decision-making power categories: see below Table IV-4.

The main problem with the two provincial school board models we have studied lies in achieving a state of balance among the levels of decision-making. Such a balance is difficult to establish. In this type of model, the minority acquires a structure which potentially permits it to develop by giving it the necessary means to do so. At the same time, however, there is a risk of falling into too great a degree of centralization. The challenge lies in achieving some kind of reconciliation between local decision-making autonomy and sufficient administrative efficiency to ensure the delivery of quality services. The representational base, moreover, must reconcile the persons concerned: the parents, first of all, and then the other members of the minority. This presents a major difficulty, because other members of the minority are often less militant than parents, who feel the urgency of their demands more strongly. The provincial management models are innovative: they still need to be more clearly defined, polished and, in some respects, revised.

2. Language-based local school boards in association with provincial general councils

a. Saskatchewan (1989)

The management model presented here originates in the document, *A Fransaskois Component for the Saskatchewan School System* (1989).

In 1984, two factors led the Commission des écoles fransaskoises to submit "Projet: Commission scolaire fransaskoise" to Saskatchewan's Minister of Education. The two factors were: (1) the ineffectiveness of advisory committees in ensuring the quality of minority instructional services; and (2) the dwindling of the minority community through assimilation. The Commission des écoles fransaskoises¹² made a proposal for the establishment of a Francophone school board.

The Ministry of Education rejected the model, although similar systems exist in northern Saskatchewan¹³. Implementation of the model then became the subject of a declaratory petition to the Court of Queen's Bench in 1987 in *Commission des écoles fransaskoises inc. v. the Government of Saskatchewan*. Invoking a question of procedure, Judge Wimmer decided, however, not to study the petition. He indicated that it was a problem for the legislatures or a question to be studied by a constitutional reference. In the same judgment, Judge Wimmer recognized the minority's right to govern and control its own schools.

On 14 June 1988 the Government of Saskatchewan signed an agreement with the federal government designed to strengthen the use of French in the province. In section 3 of this agreement, the province consents, in consultation with the Francophone community, "to implement a system for the management and control of school facilities." Following this agreement, Saskatchewan's Minister of Education appointed a 21-member committee to recommend an appropriate system of control and management. This committee was made up of:

- a neutral chairman;
- five representatives of the Fransaskois community;
- five representatives of the provincial government;
- five representatives of the organization uniting the various school boards and their trustees; and
- five representatives of the professional sector.

The committee submitted its recommendations in June 1989 in a report entitled *A Fransaskois Component for the Saskatchewan School System*. These recommendations were accepted by the Minister of Education. The implementation of a management system for the Saskatchewan minority is therefore under way through a unique structure of local school boards in association with a provincial general council.

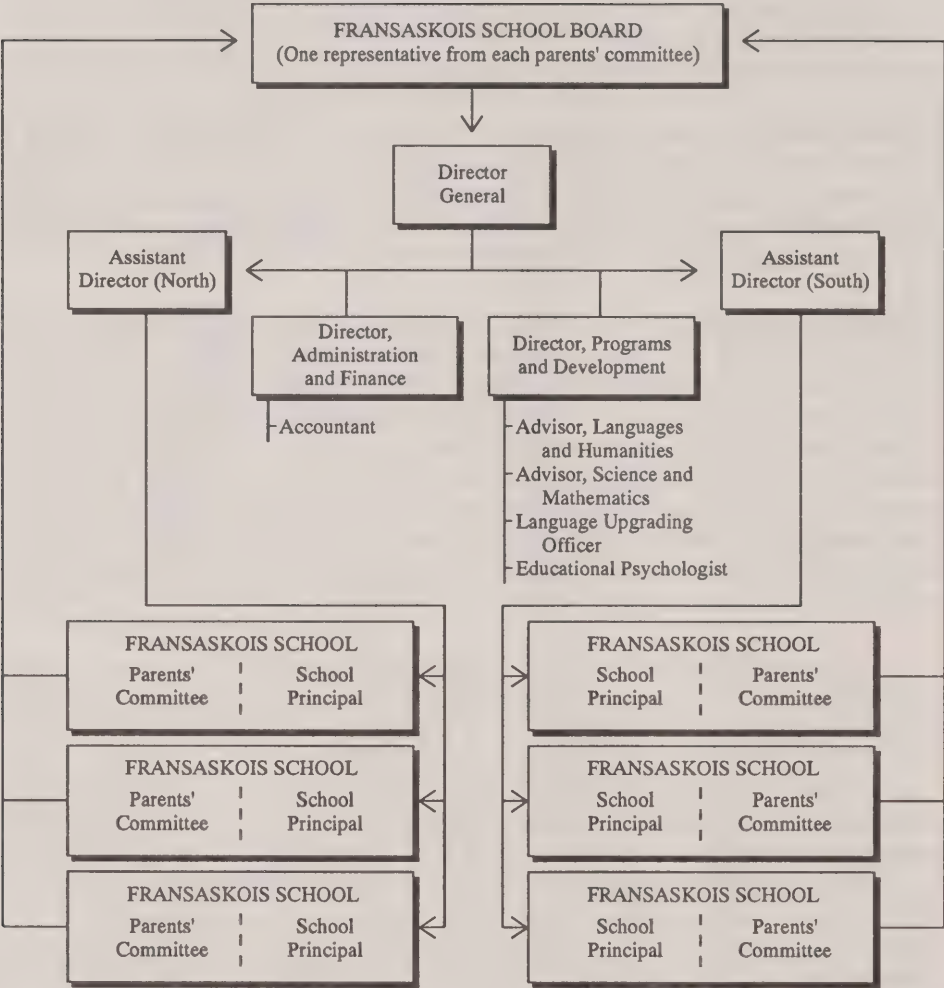
The structure proposed in the report of the Coordinating Committee for the Governance of French Schools by Francophones is the result of the evolution of the long review of the school management question by the Fransaskois. The structure proposed by the committee is, in fact, very largely drawn from the previous proposals of the Commission des écoles fransaskoises. Table IV-15 recapitulates the structure proposed by the latter. The provincial school board then had dominance in the organization chart, a choice based on four guiding principles: (1) safeguarding the cultural identity, (2) integration of a collectivity distinct from the majority; (3) local autonomy; and (4) financial viability of services. Overall, the model was based on a centralized approach and was destined for parents, who were to play the role of decision-makers.

The new model proposed in 1989 by the Coordinating Committee for the Governance of French Schools by Francophones is based more on the local decision-making level. Its principal recommendations are as follows.

In a community where a French-language school already exists, a local school board, called the "Conseil scolaire fransaskois de (name of location, school)", is to be set up. It will have between five and ten trustees, and they will be elected on the third Wednesday of October for a three-year term in accordance with section 32 of the Saskatchewan Education Act. Trustees must, however, be parents, and have a child enrolled in the French school: this criterion, the committee believed, will be particularly important when the system is first implemented.

In the case of regions and communities where there is as yet no French school, parents will also be able to express a choice. After an information campaign, they will be able to vote "yes" or "no" to having a French school. If the vote is positive, "the Committee concluded that it would be best to leave this first election entirely to the parents in terms of both voting and running for office". (*Component*, 1989, p. 10)

Table IV-15
Organization chart (Saskatchewan)
The Fransaskois School Board



Fransaskois school boards should exercise the same powers and responsibilities as the other school boards of the province. These powers and responsibilities are described in sections 91 to 95 of the Education Act. The principal responsibility of the Fransaskois school board is to oversee the operation of its French-language school. The board may determine, among other things, the school's denominational status. A local school board may, however, delegate some responsibilities to the provincial general council. The function of the school principal is similar to that of the director general in a majority school board: there is no need, therefore, to create a new administrative infrastructure.

At the provincial level, the mandate of the central organization, the Conseil général des écoles fransaskoises, is to provide support for the local school boards. Two representatives from each school will sit on the Conseil as long as the system has no more than five school boards; when there are more than five school boards, each board will appoint one representative to the Conseil. The Conseil will have a permanent staff of:

- an executive director responsible for the organization;
- a secretary-treasurer;
- secretarial staff;
- assistant directors to provide professional services to local boards.

The committee report included a partial list of suggested Conseil functions:

- allocating budgetary resources to school boards;
- providing direction to ensure the integrity of the Fransaskois system;
- ensuring that all services offered to the majority are offered to the minority;
- hiring and directing its own staff;
- negotiating funding with the Ministry of Education;
- determining requirements and establishing priorities for special allocations;
- setting school boundaries for each Fransaskois school;
- informing the competent authorities about Fransaskois needs;
- providing assistance to local school boards in identifying and evaluating teachers, evaluating programs, making available special educational services, preparing budgets, psychological counselling, library services, etc.

The committee also made recommendations affecting the structure of the Ministry of Education. It suggested the appointment of an assistant deputy minister for French education programs supervising two directorates: one for minority services, the other for services in French as a second language.

It is in modes of funding that the projected Fransaskois school boards differ from the majority school boards. Funding will come entirely from government sources. School taxes raised by school boards are replaced by direct government funding. This choice makes it possible to fund a new system of education without changing the current system. Funding for

Fransaskois school boards will come from three main sources:

- per-pupil payments equivalent to the taxes levied by a school board;
- a basic grant from the Ministry of Education calculated on the same basis as for any school division;
- a “top-up amount” to cover the extra “catch-up” requirements of Francophone schools (p. 14).

By affirming at the outset the equality of rights and powers between the Fransaskois and the majority school management systems, the model gives the minority the means to make decisions vital to its growth. The supposition is, therefore, that it will administer all the essential elements of school management. Nonetheless, as Table IV-16 shows, the division of powers and responsibilities between the local and the provincial levels is not fully defined and is consequently a potential source of difficulties. Table IV-16 also shows that a number of elements have not yet been specified. Since, however, the project is still being developed and is going through a process of consultation and implementation, it may be assumed that these elements will be clearly defined along the way.

Table IV-16
Proposed school management model – Parallel to majority structure:
Local school boards in association with a provincial general council: Saskatchewan (1989)

1. Teaching	C* a t.	2. Finance and general administration	C a t.	3. Personnel	C a t.	4. Material management	C a t.
Pre-school teaching	DL	Administration Budget Internal control External control	DL/DP DL/DP	Administration Work organization Recruitment and selection	DL DL	Administration Supply Shipping	
Elementary teaching	DL	Payroll Collection of revenue	DP	Assignment and salaries Evaluation	DL DL/DP	Maintenance and repair – buildings, grounds Janitorial services Energy consumption – heat, electricity	
Secondary teaching	DL	Boards of trustees and boards of directors (election and/or appointment) General management Corporate secretariat Debt servicing Orientation of educational projects Policy Informatics	DL/DP DP DP DL/DP	Accreditation (provincial) Professional development Organizational development	DL	Leasing/construction of buildings Safety and security – insurance, surveillance School and municipal transfers – exchanges of service Electronic communications – telephone, intercom	DL/DP
Language-upgrading classes	DL						
Continuing education							

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research
Guidance	Parent committees	Library	Program development	Evaluation of student achievement
• orientation	School committees	Audio-visual	School evaluation	Evaluation of school system
• psychological counseling	Community schools	Computers and informatics	Evaluation of teaching materials	Teacher evaluation
• academic information	Joint municipality-school board committee		Program evaluation	Research
• health			Teacher training	
• pastoral care			Ministry of education staff	
• student activities				
School enrolment				
• admission				
• attendance				
Supervision				
School transportation				
• contracts				
• transfers				
Cafeteria				
Loans and scholarships				
Residences				

*Decision-making power categories: see below Table IV-4.

The question of funding remains thorny under a taxation system equivalent to that of the majority. The proposed management model, on the other hand, takes clear account of the need for equitable and effective funding. The committee proposed concrete measures to achieve equity and effectiveness.

The consolidation of the minority at two levels offers a major advantage in a geographically very large province. It promotes the linguistic homogeneity which the minority needs in order to develop. This consolidation has, however, a temporary disadvantage. The homogeneity is limited, in the first place, to parents and children: there is a risk, therefore, of a substantial diminution of the school's role in the community. This disadvantage can also, however, become an advantage, because it allows for the gradual implantation of a new system which in its first phase may be very complex.

The fundamental questions remain to be asked. Does this model implement the full rights conferred by section 23 of the Charter? Does it promote minority development? Does it encourage effective action, giving the minority the means it needs to develop under its own momentum? We can confirm at the outset that this model promotes development of the minority and allows it to act. The minority, however, continues to be dependent on government for its funding and is thus placed, to some extent, in a reactive situation vis-à-vis government.

The model for the Fransaskois school system enjoys political and community support, which its development and the history of the issue in Saskatchewan have both encouraged.

3. The minority school board and the language-based regional school board

This section is devoted to the study of a management model implemented in New Brunswick in 1981 and proposed for Prince Edward Island in 1988: the language-based regional board in association, where circumstances permit, with a minority school board. In general, this model institutes a dual regime for official language populations: it is more appropriate for provinces where denominational rights have not been institutionalized.

a. *New Brunswick (1981)*

In New Brunswick, when the consolidation of many school units (422) into 33 consolidated districts took place in 1966, the effect in some places was to bury Francophones in new and predominantly Anglophone structures. The demand for homogeneous schools in "bilingual" regions then began to grow, because a section in the Official Languages Act (1969) promulgated in 1976 contemplated linguistic duality in instruction when it declared that "where the mother tongue of the pupils is French, the chief language of instruction is to be French and the second language is to be English" (s. 12(b)). This same act, however, justified the establishment of bilingual schools: when the mother tongue of one group of pupils is English and, of the other, French, the same school may offer courses to each group in its mother tongue.

In 1979, the *Report of the Committee on the Organization and Boundaries of School Districts in New Brunswick* recommended:

That all school districts be established on a first-language basis, that is, English or French, and that this be prescribed in the Schools Act. (p. 55)

In 1981 the *Schools Act* was amended to organize school districts, schools and classes on the basis of one or the other of New Brunswick's official languages. For the management system, this reorganization meant a double school boundary map, majority school boards and minority school boards. We will now explain how these organizations are constituted.

The school districts are demarcated on a double school boundary map. The province is divided up once for the Francophone group and again for the Anglophone group. Although the school boundaries are in many cases similar, they sometimes overlap: a Francophone district can include some of the territory of an Anglophone district. When the majority in one geographic region is English mother tongue, the French mother-tongue minority has the right to the establishment of a so-called "minority" school district.

In New Brunswick at present, there are 15 majority French-language school boards and 24 majority English-language school boards. Francophone and Anglophone school boards have the same powers and responsibilities. The board has 7, 9 or 11 members, as determined by the Lieutenant Governor in Council. Trustees are elected in school districts divided into electoral districts for a term of three years. Residents must declare in which linguistic group they wish to participate.

In regions where one linguistic group is too small, minority school boards are established in conformity with s. 18.1(1)(b) of the Schools Act, either on the initiative of the Minister, or within a period of six months under the following conditions:

where parents (i) who reside in that school district, (ii) whose language is the official language which is not the official language on the basis of which the school district is organized, and (iii) who are the parents of not less than thirty children of elementary school age, submit a request [to the Minister] in accordance with the regulations...

The formation of a minority school board can precede or follow the establishment of a school. Three French-language minority school boards (Fredericton, Newcastle and Saint-John) and one English-language minority board (Edmundston) have been created. By 1985, only one was left, the minority Anglophone board for the Edmundston region in District No. 54. The three others had become ordinary school boards.

The special features of minority school boards call, nonetheless, for a brief description, since these boards constitute an important model in the history of minority management.

The number of trustees is established by the Minister and varies from three to five. Trustees are appointed by the Minister with the approval of the Lieutenant Governor in Council for a three-year term. In the operation and administration of schools under their control, minority school boards have the same responsibilities and authority as ordinary school boards. Low enrolment, however, prevents some of these school boards from offering all the educational and administrative services of the majority district. The minority board consequently may, and sometimes must, enter into agreements with other school boards. Transportation of pupils is one example. Regional Ministry of Education staff may, furthermore, carry out some of the board's administrative and supervisory functions, such as pedagogical services.

Through school boards, the New Brunswick model gives complete autonomy to both linguistic groups at the regional level. This education system is, however, more centralized than that of the Prairie provinces, Ontario or even Quebec. The Minister delegates very few of the powers that have traditionally devolved upon him. The division of powers is illustrated in Table IV-17: it should be noted that powers are frequently shared and that the province retains the final decision-making authority. One example of centralization is that ownership of property resides legally with the province, and school boards must submit a detailed inventory. The minister may transfer material from one school district to another. Budgets are approved by the Ministry, which distributes all the funds: usually, school boards have no right of taxation. The province makes all decisions on the location, leasing and construction of schools. Salaries for teaching and administrative staff are negotiated with the Ministry of Education according to provincial scales, and the payroll section is located in the Ministry.

Although the system gives the official minority management rights equal to those of the majority at the provincial level, it would be ineffective if the Ministry did not offer a double structure. The New Brunswick Ministry of Education has three divisions. Two are language-based: a Francophone division, under a Francophone deputy minister, is responsible for services to Francophones; a similarly constituted Anglophone division serves Anglophones¹⁴. A third division, administration and finance, deals with financial services common to all school boards¹⁵.

Table IV-17

School management model in force – Parallel to majority structure:
 Minority school boards and language-based regional school boards, New Brunswick (1981)

1. Teaching	2. Finance and general administration	3. Personnel	4. Material management	5. C a t.
Pre-school teaching	DR	DR	DR/DP	DR/DP
• language, mathematics, music, social skills, art, science, motor skills, religion	Administration Budget Internal control External control	Administration Work organization Recruitment and selection	Administration Supply Shipping	DR DR
Elementary teaching	DR	DP	DR/DP	DR
• regular • students with special needs/gifted	Payroll Collection of revenue Boards of trustees and boards of directors (election and/or appointment)	Assignment and salaries Evaluation	Maintenance and repair – buildings, grounds Janitorial services	
Secondary teaching	DR	DR	DP	DP
• regular – courses • vocational – shops – common-core syllabus	General management Corporate secretariat Debt servicing Orientation of educational projects	Accreditation (provincial) Professional development Organizational development	Energy consumption – heat, electricity Leasing/construction of buildings Safety and security – insurance, surveillance	DR/DP
• students with special needs/gifted • groups of special students	Policy Informatics		School and municipal transfers – exchanges of service Electronic communications – telephone, intercom	DP
Language-upgrading classes	DR			DR
Continuing education				

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research
Guidance	Parent committees	Library	Program development	Evaluation of student achievement
• orientation	School committees	Audio-visual	School evaluation	Evaluation of school system
• psychological counselling	Community schools	Computers and informatics	Evaluation of teaching materials	Teacher evaluation
• academic information	Joint municipality-school board committee		Program evaluation	Research
• health			Teacher training	
• pastoral care			Ministry of education staff	
• student activities				
School enrolment				
• admission				
• attendance				
Supervision				
School transportation				
• contracts				
• transfers				
Cafeteria				
Loans and scholarships				
Residences				

*Decision-making power categories: see below Table IV-4.

Evaluation of the model of minority school boards and language-based regional school boards must take account of one major factor: the context of the province where the model was implemented. With its centralizing tendency, the New Brunswick system must give the minority strong representation within the Ministry of Education. If there were no decision-making power at this level, the elements essential to minority development could not exist.

The New Brunswick model respects the need for a homogeneous consolidation of the minority. The double school boundary map provides a guarantee. Consolidation at every decision-making level is also respected, and a minority school board has the further advantage of being adapted to a small clientele. The provincial level provides parallel structures for both linguistic groups and the regional level preserves decision-making autonomy in the administration of education. The regional and local levels are, however, confounded, because there is no measure to make the formation of parents' or school committees obligatory. This is certainly a weakness in the system, a greater or lesser weakness depending on the number of schools administered by each board and on the size of the board's jurisdiction.

In the case of regional majority school boards, the principle of linguistic duality makes possible the implementation of equal treatment which promotes change in a situation which historically requires reform.

The main disadvantage of the New Brunswick model has to do with the "minoritizing" structure of the minority school boards. These were a transitory measure, as were the advisory committees, but the flaws should nonetheless be pointed out. Trustees are not elected and their number is limited. The formula did not provide equal treatment for the weaker group. Moreover, where there were fewer than 30 parents of elementary-age pupils (secondary being excluded), the minority group was limited to advisory committees as described in a December 1983 amendment to the Schools Act. The Minister could, in fact, establish an advisory committee of three to five members wherever 10% of the total number of children enrolled or 10 parents made the request. The school structure was thus not perfectly equitable. That is why, since the Ministerial Order of 1985, each linguistic group belongs to a regular school board, with the exception of Minority District No. 54 of Edmundston.

Generally speaking, the New Brunswick model aims to promote the development of the Francophone minority. It can be deemed effective to the degree that it contributes to the lowest rate of assimilation of Francophones in a minority setting. Its chief strength lies in its egalitarian provincial structure. This decision-making structure must be maintained, because without it the whole model would be called into question.

The minority population, moreover, declares itself satisfied with the present arrangements. It takes pride in participating in a system paralleling that of the provincial majority. Parents have seen better academic results from their children and more participation by the

community in school affairs. Finally, cooperation with neighbouring school boards in the purchase of services has been satisfactory.

b. Prince Edward Island (1987)

Before 1990, the Prince Edward Island School Act provided that in administrative regions where Francophone pupils were in the majority, education should be given in French. This was effectively the case in School Unit 5 of Prince County, where Francophone trustees were able to administer their own schools.

After requests from the Société Saint-Thomas d'Aquin, a report entitled "La gestion scolaire en milieu minoritaire francophone à l'Île-du-Prince-Edouard" was presented in October 1987 (Arsenault). It described information meetings and the results of a survey, and proposed a school management model for Prince Edward Island Francophones. Only the main lines of this proposal can be presented here. Although the model was not adopted, the process it proposed is interesting.

The report described the four types of school management model studied at information sessions with the Island's Francophone community. These were:

- the double school boundary map of New Brunswick and of provincial systems organized on a denominational basis;
- Ontario's proportional and guaranteed representation;
- the New Brunswick minority school board;
- the 1984 Saskatchewan provincial school board.

A later survey of participants in the information sessions revealed the following preferences:

- 80% of respondents commended the double school boundary map as the one most likely to meet the needs of the province's Francophone minority;
- 73% did not approve of the proportional and guaranteed representation model;
- 60% commended the minority school board model;
- the majority of respondents did not approve of the provincial school board model.

The author of the report concluded that "Prince Edward Island should implement the double school boundary map model together with a clause allowing for the possibility of a minority school board in some regions". (p. 31) [trans.] The report then presents a tentative division of the Island into three school districts designed for the Francophone minority and suggests that the minimum number of parents required by law to support any claim for management rights should be 25.

The Prince Edward Island study is interesting for two reasons. It describes a process of consultation and community information; and it demonstrates that a model can be adapted

to another province: the model recommended is adapted from the model in force in New Brunswick.

The qualities of the New Brunswick model are desirable in the Prince Edward Island context. The great disadvantage of the Prince Edward Island proposal lies in the fact that it does not involve consolidation at the three decision-making levels. No management mechanism is suggested for either the local or the provincial level. Unless a section for Francophone services is created within the Ministry of Education, there is a risk that the model will create new difficulties, i.e., the necessity of reacting to provincial decisions and so will not encourage the flourishing of the minority.

4. Language-based regional school boards

In four Canadian provinces¹⁶, the official minority possesses or will possess a structure of language-based regional school boards. We have studied the case of New Brunswick, where the Francophone (or Anglophone) minority is consolidated, according to its numbers, into (majority) regional school boards or into minority school boards. We have also looked at the case of Prince Edward Island, where one school board (Unit 5) was established on a language basis before 1990.

In Ontario, two regions possess language-based school boards: Toronto and Ottawa-Carleton. In Quebec, the Anglophone minority, through the longstanding denominational system, has frequently managed its own system of education. As we have seen in Chapter II, however, it has progressively lost this management control because of the increasing linguistic heterogeneity of the Catholic and Protestant groupings. Under section 93 of the Constitution Act, 1867, the Quebec and Ontario school systems are organized on a denominational basis. This leads to difficulties in dividing up territory on a basis of language. In this section, we shall look at how these difficulties are resolved in Ontario (Toronto and Ottawa-Carleton) and Quebec.

a. Ontario: the Metropolitan Toronto French-Language School Board (1986)

The creation of a language-based school board is the logical outcome of French-language programs in the Metropolitan Toronto public school system. In 1982 the *Report of the Joint Committee on the Governance of French-Language Elementary and Secondary Schools* recommended that a French-language "section" be established, made up of nine trustees responsible for managing minority instruction. In 1986, Bill 75 brought some changes to the Municipality of Metropolitan Toronto Act and created a Metropolitan Toronto French-Language School Board. In January 1987, the Ministry of Education set up a committee with the mandate of finding transitional modes that would not conflict with the new system. After consultations, public hearings and work by sub-committees, the committee submitted a report making recommendations on the transfer of components (staff, equipment and premises, services, programs, community relations and funding) between the existing school boards and the new Francophone school board. The title of the report was *Preparing for the Future*. ■

The Metropolitan Toronto French-Language School Board came into force on 1 January 1989. It is part of a federation of seven "sectoral" school boards in the Metropolitan Toronto region. The new board is thus managed at two levels through a unique structure. The Board is made up of nine school trustees representing electoral areas. They are elected by Francophone ratepayers supporting the public school system. Electors must

- be public system ratepayers;
- be residents of the area municipality;
- have chosen to vote only for members of the French Language School Board.

The French-Language School Board appoints two trustees to the Metropolitan Toronto School Board. One of the two trustees must be the Board chairman.

The Metropolitan Toronto School Board is responsible for approving the budget of each sectoral school board, for the preparation of joint budgets, for the setting of mil rates, for funding and approving building programs, as well as the administration of schools for trainable retarded children (p. 31). The French-Language School Board assumes the same responsibilities that devolve on the other six sectoral boards and determines the whole range of services and programs offered to pupils at three homogeneous schools and one mixed secondary school. Its total enrolment in September 1988 was 1,648. The powers and responsibilities of the Board are described in Table IV-18.

To maintain the same quality of services offered to French-language pupils before January 1989, the transfer of schools and services was done through the purchase of educational, administrative and community services. The transfer of buildings and staff was effected in the same way.

The management model introduced in Toronto gives the minority and the majority the same powers. It is a decentralized system which tries to serve the various needs of Toronto's heterogeneous population. In this way it responds to the requirement of managing elements vital to the development of the official language minority. A few elements, however, may be litigious: approval of the general budget, funding and approval of building programs by the Metropolitan Toronto School Board.

Table IV-18

School management model in force – Parallel to majority structure: Language-based regional school board, Toronto (1985)

1. Teaching	C* a t.	2. Finance and general administration	C a t.	3. Personnel	C a t.	4. Material management	C a t.
Pre-school teaching	DR	Administration	DR	Administration	DR	Administration	DR
• language, mathematics, music, social skills, art, science, motor skills, religion		Budget	XS	Work organization	DR	Supply	DR
		Internal control	DR	Recruitment and selection	DR	Shipping	DR
		External control				Maintenance and repair	DR
Elementary teaching	DR	Payroll	DR	Assignment and salaries	DR XS	– buildings, grounds	
• regular		Collection of revenue	XS	Evaluation	DR	Janitorial services	DR
• students with special needs/gifted		Boards of trustees and boards of directors (election and/or appointment)	DR	Accreditation (provincial)	DR	Energy consumption	DR
Secondary teaching	DR					– heat, electricity	
• regular		General management	DR	Professional development	DR	Leasing/construction of buildings	XS
– courses		Corporate secretariat	DR	Organizational development	DR	Safety and security	DR
• vocational		Debt servicing	DR			– insurance, surveillance	
– shops		Orientation of educational projects	DR			School and municipal transfers	DR
– common-core syllabus		Policy	DR			– exchanges of service	
• students with special needs/gifted		Informatics				Electronic communications	DR
• groups of special students	XS					– telephone, intercom	
Language-upgrading classes	DR						
Continuing education	DR						

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research	10. Evaluation and research
Guidance	DR	DR	DR	DR	DR
• orientation	Parent committees	Library	Program development	Evaluation of student achievement	DR
• psychological counselling	School committees	Audio-visual	School evaluation	Evaluation of school system	DR
• academic information	Community schools	Computers and informatics	Evaluation of teaching materials	Teacher evaluation	DR
• health	Joint municipality-school board committee		Program evaluation	Research	DR
• pastoral care			Teacher training		
• student activities			Ministry of education staff		
School enrolment	DR				
• admission					
• attendance					
Supervision	DR				
School transportation	DR				
• contracts					
• transfers					
Cafeteria					
Loans and scholarships					
Residences	DR				

*Decision-making power categories: see below Table IV-4.

The model of a language-based school board permits the consolidation of the minority at the regional level and also provides major decision-making power. The Toronto model offers services to public system ratepayers among the Francophone minority. It fails to settle difficulties created by denominational rights: the consolidation of the minority is not complete because Roman Catholic Francophones are left out. Nor does the model confer decision-making power at the local level, even though it notes the important role a school board can play in the community. Suggestions for the creation of "school committees" are made, but no formal mechanism is adopted to ensure the participation of the community and to delegate responsibility to it at the local level, i.e. for each school. The areas in which parents can participate in advisory committees (study programs and professional training) are not necessarily the areas in which they take most interest, nor the areas in which they can make the most useful contribution.

b. *Ontario: the Ottawa-Carleton French-Language School Board (1988)*

The idea of creating a French-language school board for the Ottawa-Carleton region is not new. In 1977 the *Report of the Ottawa-Carleton Review Commission*, known as the *Mayo Report*, recommended the creation of a homogeneous French-language school board including all pupils from kindergarten through high school. This board would be Catholic to begin with; a public section would be added later. The government did not approve the establishment of these two levels, and proposed the creation of English and French sections within each of the four existing school boards¹⁷. In 1982, the *Report of the Joint Committee on the Governance of French-Language Elementary and Secondary Schools* also suggested the creation of French and English sections within the region's school boards. On the other hand, the 1986 report of the *Study Committee on French-Language Education in Ottawa-Carleton* recommended in a detailed study "that the Ottawa-Carleton French-Language School Board have two sectors: one for Roman Catholic schools and one for public schools" (p. 41). With the adoption of Bill 109 in 1988, this school board was created. It began operating on January 1, 1989.

The demographic and linguistic situation of Ottawa-Carleton is unique. Because of the proximity of Quebec and the status of Ottawa as the capital of Canada, it has a significant Francophone population. Today there are five school boards in the region: four English-language and one French-language. The French-Language School Board of Ottawa-Carleton has two sections: one public and one Catholic.

The structure of the management model established in this region for official minority language education is based on the sections on proportional and guaranteed representation in Ontario's Bill 75. It is applied to the confessional system in an attempt to protect the confessional rights confirmed by section 93 of the Constitution Act, 1867. The public section has eight trustees and the separate section, 14, all elected by Francophone ratepayers meeting the following conditions:

- proprietor or tenant of a property in the region, or spouse of a proprietor or tenant;

- enumerated as a French-speaking person;
- chooses to vote exclusively for the public or separate section of the French-language board (cf. Bill 109, p. 30).

The Catholic and public sections come together in one full board to take certain decisions and offer certain services. This latter board possesses all the powers and exercises all the functions that the Education Act entrusts to or imposes on a school board, with the exception, of course, of those which come under the exclusive jurisdiction of the sections.

Since January 1989, the sections have had exclusive management of questions relating to public (approximately 6,000 pupils) and separate (approximately 11,550 pupils) classes and schools. Their jurisdiction extends further than that of the minority language sections in the proportional and guaranteed representation model. Table IV-19 presents the details as described in Bill 109. In describing this model, we distinguish between the powers of the sections (RS) and the powers of the full board (RB) which is made up of the members of the two sections.

The sections are the exclusive tributaries of power for all but two components: general administration and material management. The school board owns the goods and properties which are then assigned to the sections. The two sections must approve the appointment or dismissal of the executive director. The full board hires the executive director, the corporate secretariat and the financial officers. Every component not specifically mentioned in the act belongs by right to the section and not to the full board¹⁸.

The model for Ottawa-Carleton's language-based school board is, like the others, the outcome of an historic process. It has the great advantage of giving the French-language minority all the decision-making powers it requires to enable the community to develop. In this model, the rationale of "sections" is transformed to serve the decision-making needs of the denominational groups on an equal basis. It represents an improvement on the model of proportional and guaranteed representation in that it gives greater power to the sections and identifies them from the outset as the principal place of management, making them for all practical purposes *de facto* school boards.

Even though it satisfies the principles and objectives of minority management, this model gives rise to two difficulties. First, the electoral process must be fine-tuned, and the choice of adhering to the French-language system made easier, and even promoted, by municipal and provincial authorities. Without this competitiveness, the French system runs the risk, in bringing together only a part of the population, of encountering difficulties related to lower tax revenues. The system of funding must be rethought to ensure equal access to resources and services. Second, minority consolidation confers decision-making power at the regional level, but does not implement any system other than that of local consultation by advisory committees. The local community has no decision-making responsibility.

Table IV-19

School management model in force – Parallel to majority structure: Language-based school board, Ottawa-Carleton (1986)

1. Teaching	C* ■ L	2. Finance and general administration	C a L	3. Personnel	C a L	4. Material management	C a L
Pre-school teaching	RS	Administration	RS/RB	Administration	RS	Administration	RB
• language, mathematics, music, social skills, art, science, motor skills, religion		Budget		Work organization	RS	Supply	
		Internal control		Recruitment and selection	RS	Shipping	
		External control		Assignment and salaries	RS	Maintenance and repair – buildings, grounds	RB
Elementary teaching	RS	Payroll	RS	Evaluation	RS	Janitorial services	RS
• regular		Collection of revenue	RS	Accreditation (provincial)		Energy consumption – heat, electricity	RS
• students with special needs/gifted		Boards of trustees and boards of directors (election and/or appointment)	RS/RB	Professional development	RS	Leasing/construction of buildings	RS/RB
Secondary teaching	RS	General management Corporate secretariat	RS/RB	Organizational development		Safety and security	RB
• regular		Debt servicing	RS			– insurance, surveillance	
– courses		Orientation of educational projects				School and municipal transfers	
• vocational	RS	Policy				– exchanges of service	
– shops		Informatics				Electronic communications – telephone, intercom	
– common-core syllabus							
• students with special needs/gifted	RS						
• groups of special students							
Language-upgrading classes	RS						
Continuing education							

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research	Ca t.
Guidance	RS	RS	RS	RS	RS
• orientation	RS	Library	Program development	Evaluation of student achievement	
• psychological counselling	RS	Audio-visual	School evaluation	Evaluation of school system	
• academic information	Community schools	Computers and informatics	Evaluation of teaching materials	Teacher evaluation	RS
• health	Joint municipality-school board committee		Program evaluation	Research	
• pastoral care			Teacher training		
• student activities	Advisory committees		Ministry of education staff		
School enrolment	RS	RS			
• admission					
• attendance					
Supervision					
School transportation	RS				
• contracts					
• transfers					
Cafeteria	RS				
Loans and scholarships					
Residences					

*Decision-making power categories: see below Table IV-4.
 RS: regional sector
 RB: regional board

c. *Quebec: language-based school boards (1988)*

Historically, the Quebec school system has been run on a denominational basis. The whole territory is divided up following a double school boundary map among Catholic school boards (201), Protestant school boards (29) and multi-denominational¹⁹ school boards (4). As things have worked out, the Anglophone minority has managed a good number of its educational facilities. Since 1983, various proposals have been made in Quebec for legislation to establish a link between the act and the needs of the Anglophone minority.

Bill 40, introduced in the National Assembly in 1983 and later withdrawn, was an audacious project based on the White Paper, *Une école communautaire et responsable* (1982). It gives primacy to the school and makes it a decision-making level for educational and pedagogical matters and the management of financial, material and human resources. In educational matters it reflects the increased public desire for participation, a process begun by Bill 71, which had established "orientation committees" in 1979. It should be recalled that these committees had not in fact been set up because of the resistance of the school boards.

Bill 40 went much farther, and made the school a legal entity. The school board became a service corporation determining the denominational basis of its schools. The Bill thus shifted the whole decision-making process towards the local level. The territorial jurisdiction of the school board is language-based, except in Montreal, Quebec, Greenfield, Portage-du-Fort, Baie-Comeau, Laurentienne and Rouen: the school boards in these regions are protected under the terms of section 93 of the Constitution Act, 1867.

In December 1984, the National Assembly passed Bill 3. This Act continues to make language-based school boards, Anglophone or Francophone, the basis for the education system. It shifts decision making toward the board of trustees, but introduces an innovation in providing for one-third of the board seats to be occupied by parents appointed by their school councils. Bill 3 was declared unconstitutional by the Quebec Court of Appeal in 1985 because it contravened the terms of section 93 of the Constitution Act, 1867, by not protecting denominational rights acquired in 1867.

After this, the Quebec government drafted a new bill, which was adopted by the National Assembly in December 1988: Bill 107, Education Act. Although less daring than Bill 40, it dealt with the same two issues: (1) structures to accommodate the two linguistic groups and (2) a project to increase local participation. The government announced its intentions in the following way:

The bill is designed to make the school legally more independent of the school board, while preserving its organizational links with the board and the other schools connected with the board. It gives both the school and persons acting for the school a larger say in the decisions of the board. (p. 2)

The bill provides for the division of the territory of Québec into French language school board territories and English language school board territories. The school boards will have jurisdiction over preschool, elementary and secondary education.

School boards were thus reorganized on the basis of language by means of a double boundary school map. This was not the case with school boards protected by section 93. Catholic and Protestant school boards of the cities of Quebec and Montreal, dissentient Catholic school boards²⁰ and dissentient Protestant school boards²¹ retained their denominational status.

Under the terms of Bill 107, the role of the school board is to offer services which are supervised and directed by the Ministry of Education. The board of trustees is made up of trustees elected by ratepayers, of a representative elected by the parents' committee for primary services, and of one similarly elected for secondary services. The board's general functions are:

- to ensure that persons coming under its authority receive the educational services to which they have a right;
- to be responsible for educational services for adults;
- every three years, to draw up a building allocation plan;
- to consult with orientation committees and parents' committees; and
- to enter into agreements with other school boards or organizations for the delivery of services (handicapped, junior kindergarten, adult, primary, secondary, professional or other).

For functions related to educational services (instruction), the school board ensures that the government's pedagogical system is applied. It also makes sure that obligatory material in the Ministry's study programs is taught. It confers on its schools the denominational status of the majority of pupils and provides complementary services to the denominational minority. Its other functions are divided among human resources, material resources and transportation. In general, the act grants school boards functions and not powers. School boards come under the thumb of a powerful provincial decision-making level: they may be seen as an application mechanism and not an autonomous system. Table IV-20 shows the distribution of decision-making authority between the regional level and the provincial level under whose jurisdiction the school boards fall. Management components are often, therefore, administered at the same time through regional decisions (DR) and through provincial decisions (DP).

Table IV-20

Proposed school management model – Parallel to majority structure: Language-based school board, Quebec (1988)

1. Teaching	C* a t.	2. Finance and general administration	C a t.	3. Personnel	C a t.	4. Material management	C a t.
Pre-school teaching	DR/DL	Administration	DR	Administration	DR	Administration	DR
• language, mathematics, music, social skills, art, science, motor skills, religion		Budget	DR	Work organization	DR	Supply	DR
Elementary teaching	DR/DL	Internal control	DR	Recruitment and selection	DR	Shipping	DR
• regular		External control	DP	Assignment and salaries	DR	Maintenance and repair	DR
• students with special needs/gifted		Payroll	DR	Evaluation		– buildings, grounds	
Secondary teaching	DR/DL	Collection of revenue	DR/ DP	Accreditation (provincial)	DP	Janitorial services	DR
• regular		Boards of trustees and boards of directors (election and/or appointment)	DR/ DP	Professional development	DR	Energy consumption	DR
– courses		General management	DR	Organizational development	DR/ DP	– heat, electricity	
• vocational		Corporate secretariat	DR			Leasing/construction of buildings	DR
– shops		Debt servicing	DR			Safety and security	DR
– common-core syllabus		Orientation of educational projects	DR			– insurance, surveillance	
• students with special needs/gifted	DR	Policy	DR			School and municipal transfers	DR
• groups of special students	DR	Informatics	DR			– exchanges of service	
Language-upgrading classes						Electronic communications	DR
Continuing education	DR					– telephone, intercom	

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research
C a t.	C a t.	C a t.	C a t.	C a t.
Guidance	DR/ DL	DL	DR	RP
• orientation		Library	Program development	Evaluation of student achievement
• psychological counselling		School committees	DL	
• academic information		Audio-visual	DL	
• health		Computers and informatics	DL	
• pastoral care		Community schools	DL	
• student activities	DL	Joint municipality-school board committee	Evaluation of teaching materials	Evaluation of school system
School enrolment	DL		DR-DP	DR
• admission			Program evaluation	Teacher evaluation
• attendance	DL		Teacher training	Research
Supervision	DR		Ministry of education staff	
School transportation	DR			
• contracts				
• transfers				
Cafeteria				
Loans and scholarships				
School regulations (conduct)	DR			
Residences	DL			

*Decision-making power categories: see below Table IV-4.

At the local level, the Act places the school under the pedagogical and administrative direction of a principal. Every year, the school board must establish an orientation committee for each school. This committee is made up mostly of parents. It includes a minimum of two teachers, one representative of the non-teaching staff, two students from the second cycle of the secondary level (grades 10 and 11) and the school principal. The principal is a non-voting member.

Although it is primarily a place for discussion and coordination among the partners in the school, the orientation committee can perform all functions delegated to it by the school board. As a rule, it has more power than an advisory committee. Its decision-making responsibilities are indicated by the code (DL) in Table IV-20. It encourages exchange, and regulates the conduct of pupils and users of the school. It approves the choice of educational activities which are not part of the study programs. It gives an opinion to the school management on the school's particular orientations contained in the educational project.

The orientation committee advises the school board or makes recommendations to it on the following issues:

- denominational identification of the school;
- the means of application of school regulations corresponding to overall pedagogical requirements established by the Ministry;
- the enrichment or adaptation of official study programs;
- organization of school manuals and teaching material;
- organization, on school premises, of sports, socio-cultural and child care services.

The establishment of an orientation committee does not preclude the establishment of a school committee, which in turn advises the orientation committee.

The model of Quebec's language-based school boards satisfies all the objectives and principles of minority development. It gives the minority all the management powers possessed by the majority. It has the following advantage as well: it attempts to institute greater local autonomy and encourages the implementation of greater decision-making power.

Nonetheless, Bill 107 does not specifically anticipate the reorganization of Ministry of Education services on the basis of language, although this transformation is under way. Linguistic consolidation at the provincial decision-making level is very important in Quebec, because the Ministry exercises considerable decision-making power and influence, to the point that the powers of the regional level are reduced to implementation of school regulations.

Bill 107 also preserves the denominational status of the school boards of Montreal and Quebec and of the five dissentient school boards. As it happens, by far the largest part of the Anglophone population lives in Montreal and surrounding areas. The Act does not

regulate the problem of increasing linguistic heterogeneity that is found in both the Catholic and the Protestant boards of Montreal. It risks creating a new Anglophone minority grouping in the protected denominational boards. In Quebec City and Montreal, the Anglophone minority would be redistributed among the Protestant, the Catholic and the new Anglophone school boards.

Bill 107 has been submitted, at the request of the Quebec government, to the Quebec Court of Appeal²² so that its constitutionality with respect to denominational rights conferred by section 93 can be tested. There is some question about the territorial jurisdictions of the Québec and Montréal school boards: do they correspond to those of 1867 or to those of today? Moreover, Protestant school boards other than the five dissentient school boards of 1867 argue that their existence is derived from the right to dissent exercised under section 93. If this is indeed the case, section 93 of the Constitution Act, 1867 would have to be amended before language-based school boards could be established in Quebec, or in any other place where denominational rights are entrenched in Canada²³.

The implementation of certain clauses of Bill 107 may, however, be delayed for at least five years, because the Supreme Court of Canada will certainly be called upon to decide on its constitutionality. This delay may increase the uneasiness of the English-language minority in Quebec²⁴. The attempt to provide greater local autonomy may, moreover, provide the official language minority with major decision-making powers.

III. CONCLUSIONS

A. GOAL OF THE ANALYSIS

The descriptions and evaluations in this chapter on minority school management models are intended to determine which types of model are effective in terms of the rights conferred by section 23 of the Canadian Charter of Rights and Freedoms.

To achieve this, we first described the objectives of section 23 (Chapter III), and then established the principles which should regulate the development of any model of school management for official language minorities. These criteria formed the basis for an evaluation of the 13 models of school management studied. A detailed account of the analysis was provided, so that, ultimately, the development and implementation of school management models may be guided by judicious and viable choices.

Of the 13 models of school management for/by official language minorities, seven are in effect and six are at the proposal stage. These models were categorized according to the type of power accorded to the minority. A progressive typology of powers demonstrates that the models can be classified according to the following categories: advisory, contractual, representational, and paralleling the majority structure.

B. CRITICAL THRESHOLD: MODELS THAT ARE INEFFECTIVE IN TERMS OF THE OBJECTIVES AND PRINCIPLES PROPOSED

The typology of the models evaluated reveals a critical threshold of effectiveness in school management in terms of the principles and objectives proposed. Advisory, contractual and representational models do not adhere to the objectives and principles of school management that we have described. Their disadvantages may be summarized as follows:

1. Disadvantages in terms of objectives

- They do not implement the full rights conferred by section 23 of the Charter.
- They do not provide equal treatment for the minority and the majority.
- They do not allow the minority (ethnolinguistic origin) to consolidate under one banner or structure the three aspects of management: decision-making power, influential power, and the persons affected by management.
- They do not allow for decision-making on all vital aspects of the conditions for growth.

2. Disadvantages in terms of the principles guiding the development of models

- They do not ensure linguistic homogeneity.
- They do not consolidate the minority at the three decision-making levels: local, regional and provincial.
- They do not offer independent, viable and equitable funding.

These models are ill-adapted to the intrinsic reasons for the demands of official language minorities. They cannot ensure minority development, nor can they modify a situation which discourages such development. Worst of all, they fail to give official language minorities the means of action to develop under their own momentum.

C. MODELS ADHERING TO THE PROPOSED OBJECTIVES AND PRINCIPLES AND DIFFICULTIES TO BE RESOLVED

Only the models belonging to the category “paralleling majority structures” have the potential to satisfy the demands which follow from the objectives and principles enunciated. They have been proposed or are already in force in most provinces of Canada: in Saskatchewan, Manitoba, Ontario (two models), Quebec, New Brunswick and Prince Edward Island (two models), and will shortly be proposed in British Columbia. These eight models adhering to the objectives and principles of school management for official language minorities belong to four sub-categories:

- language-based provincial school boards (Prince Edward Island, Manitoba);
- language-based local school boards in association with provincial general councils (Saskatchewan);
- minority school boards and language-based regional school boards (New Brunswick and Prince Edward Island);
- language-based regional school boards (Ontario: Toronto and Ottawa-Carleton; Quebec).

Of these models, six are in force, or will probably be so in the near future: the New Brunswick system, the Evangeline School Board of Prince Edward Island, the two Ontario regional school boards (Toronto and Ottawa-Carleton), the Fransaskois school boards in Saskatchewan, and the language-based school boards of Quebec.

Nonetheless, although these models adhere to the objectives and principles, there are still some difficulties to be resolved. These have been noted in the analyses. They are also illustrated on the analysis grid we have adopted, and in general relate to two points: (1) the question of sufficient number and (2) centralization-decentralization.

1. Sufficient number

“Sufficient number” is the *sine qua non* for obtaining the rights conferred by section 23. Since sufficient number is always relative, however, to the territory delimited, it can always be attained at the local, regional or provincial level. The models just analysed reveal that the authorities can adapt to this situation. The demographic concentrations of the majority may not suit. The school maps in use in all the provinces and territories, with the exception of the New Brunswick map and the partial exception of the Prince Edward Island map before 1990, are used to create groupings of the majority. A school map designed to consolidate the official language minority of each province and territory has still to be created. It is argued here that a double boundary school map must become the basic tool for implementing the management rights conferred by section 23.

From the difficulty that obtaining sufficient number creates, it may be concluded about school management generally that the management model to be adopted is dependent on the kind of consolidation effected to obtain the number required to justify management. A provincial consolidation will have the effect of establishing a structure based on the provincial level, though some or all of the decision-making powers may be delegated to the regional and local levels. The model will then, for example, be one of a provincial school board in association with regional committees or with school parents’ committees. Similarly, a regional consolidation, on whatever scale, will encompass all the population pockets of one part of the province. The most suitable model will then be the language-based regional school board, or possibly the minority school board, as in New Brunswick.

2. Centralization-decentralization

A second difficulty relates to the development and implementation of a management model for official language minorities. The difficulty is not unique to minorities, but concerns

them particularly. It stems from the centralization-decentralization question. To be effective, a minority management structure, as we have seen, must manifest itself at the three decision-making levels.

The aspiration to autonomy, the great disparity of needs, the mistrust of rural areas toward urban areas and between one town and another, as well as various degrees of assimilation, are all factors which support the need for decision-making consolidation at the local level. The parents and the community are most interested in what touches them most closely. The movement towards greater decision-making autonomy for parents in the education of their children is also an historic trend. From these factors, we conclude that minority management models must be particularly attentive to this dimension.

Consolidation at the regional level allows for the greatest efficiency and the use of more specialized, more expensive and more professional services. The regional level must remain the purveyor of services and the founder of an effective cultural consolidation. This is the decision-making level which prevails in most models. It must be conserved, but at the same time there must be a judicious delegation of powers to the local level.

The importance of the provincial level cannot be denied. Having already mentioned the need for a provincial consolidation of the linguistic minority, we must stress once again the role played by the Ministry of Education. A management model for the minority cannot succeed unless one section within the Ministry represents the minority. Educational guidelines come from the Ministry. The influence, the power of persuasion, and even the structural decisions lie here.

To encourage reflection on this centralization-decentralization of services question, we return to the analysis grid used throughout this study. Table IV-21 shows which components can be situated at the various levels: local regional and provincial. It is assumed that management is completely in the hands of the minority and is derived from the typology of the model paralleling the majority structure.

IV. SUMMARY

1. TYPOLOGY OF ACTUAL AND PROPOSED MODELS

Four types of model have been developed in Canada for the management of educational services by official language minorities. They are:

- A. advisory models;
- B. contractual models;
- C. representational models;
- D. models paralleling the majority structure.

Seven management systems based on this typology are currently in force and six others are at the proposal stage. (In most provinces there are advisory models consisting of parents' committees. These are not counted among the 13 systems.)

2. SCHEMATIC PRESENTATION AND EVALUATION OF MODELS DEVELOPED FOR OFFICIAL LANGUAGE MINORITIES

a. Advisory models

Advisory committees are participation mechanisms created so that members of majority groups can influence the decision-making power of a school board. They are not management models, properly speaking. This, however, is the mechanism many provincial governments favour for official language minority management.

An advisory committee set up as a management model for the official language minority cannot satisfy the needs of this minority because of the *disadvantages* listed below:

- it does not consolidate the minority by means of a school map designed to serve the needs of this minority;
- it does not give the minority the means of action to develop under its own momentum;
- it does not aim at *equal treatment* of the minority and the majority;
- the minority has no budgetary control;
- the linguistic homogeneity of the minority is not respected;
- the minority does not enjoy the *full rights* conferred by section 23;
- the model opts for the *status quo* and does *not try to modify a situation which historically* has failed to encourage development of the minority community.

Ontario's advisory committees are protected by law when majority school boards must sign agreements with other school boards for the instruction of pupils resident in their territory. These committees have the same faults as the committees described above. Moreover, they make recommendations to a school board other than the board providing the services.

b. Contractual models

Two contractual models exist: in Saskatchewan (in force) and in Alberta (proposed).

1. *Saskatoon Contract (Saskatchewan, 1982)*

A first contractual agreement was concluded in 1982 in Saskatoon between the Conseil de l'École canadienne-française de Saskatoon inc. and the Board of Education of the St. Paul's Roman Catholic Separate School Division #20 of Saskatchewan.

The *Saskatoon Contract* (1982) gives parents an advisory role.

Numerous grievances described by the parents suggest that this contract places parents at the same disadvantages as do the advisory committees described above. Moreover, the structure of the contract does not oblige the school board to accept the recommendations of the Francophone parents' committee. The lack of communication and information between the two parties creates "a climate of mistrust, apprehension and cynicism which, while deplorable, is nevertheless understandable."

2. *Proposal of the Edmonton Catholic School Board (Alberta, 1987)*

A second contractual agreement was proposed in *Edmonton* between the Société des parents des écoles francophones d'Edmonton and the Edmonton Catholic School District.

The *Edmonton proposal* (1987) is essentially the same as the Saskatoon contract; the only additions are a precise organizational chart and the delegation of more responsibilities to the minority. The minority does not, however, have final decision-making power: this remains the responsibility of the Edmonton Catholic School Board.

These contractual agreements do not satisfy the needs of the official language minority. The experience of the Saskatoon contract, moreover, led the Conseil de l'École canadienne française de Saskatoon to conclude, in 1988, that the Government of Saskatchewan should establish a provincial school board for the minority.

c. **Representational models**

Representational models originated in Ontario.

1. *Direct Representation (Ontario, 1984)*

The first model is the *direct representation* proposed in 1984 by the Study Committee on the Governance of Minority Language Education. This model bases minority representation (on majority school boards) on the value of minority residential and farm properties in comparison to the total value of the school division. A minimum number of four trustees is guaranteed, and the number of members on the board of trustees remains unchanged.

This model, being based on economic realities, i.e., on minority property assessments and not on educational rights, was unacceptable from the outset. It was never implemented.

2. *Proportional and guaranteed representation (Ontario, 1986)*

Since 1986, *proportional and guaranteed representation* has established minority language "sections" (French or English) everywhere that:

- a school board operates classes or schools for the minority; or
- purchases services for a minority of more than 300 pupils or more than 10% of its student population.

Under Bill 75, this model distinguishes management fields reserved exclusively for the minority and management fields shared with the majority.

Proportional and guaranteed representation, while having the *advantage* for the government of keeping the school map intact, does not protect the components necessary for minority development. One *disadvantage* of this model is that it provides no control over the following vital aspects:

1. in the *finance and general administration* component: unit administration, preparation and supervision of the budget, internal control, payroll, determining revenues to be collected (if the system requires a tax increase), the board of trustees or the persons who are elected or appointed, the general management, the corporate secretariat and policies;
2. in the *personnel* component: unit administration, professional development, payment of staff;
3. in the *material management* component: unit administration.

Although this model is a solid improvement over advisory committees, it nonetheless keeps the minority in a position of reactive impotence in decisions which it must share with the majority, decisions which have fundamental repercussions on minority education.

In representational models, the geographical consolidation that the official language minority requires is often subordinated to the norms of the majority. These models *do not establish double boundary school maps* consolidating the minority and redividing the majority territory.

d. Models paralleling the majority structure

Among the models which provide a structure paralleling the school management structure adopted for the majority, we find: (1) the provincial school board, (2) the local school board in association with a provincial general council, (3) the minority school board and (4) the language-based regional school board.

1. Language-based provincial school boards

One of the two models for a language-based provincial school board, that of Prince Edward Island, was implemented in 1990.

a) Manitoba provincial school board model

In 1988, Manitoba's Comité directeur des structures scolaires (CDSS), made up of members of the Société franco-manitobaine (SFM), the Conseil jeunesse provincial (CJP), the Commissaires d'écoles franco-manitobains (CEFM), the Fédération provinciale des comités de parents (FPCP) and the Éducatrices et éducateurs francophones du Manitoba (EEFM)

submitted a report entitled: "La gestion des écoles: un modèle à suivre." This management model describes the development of a provincial school board:

The exercise of powers is divided among *three levels*: the provincial, the regional and the local. It is made clear at the outset that the provincial school board has the same powers as the other provincial school boards. The provincial school board, made up of 11 trustees elected by region, hires a director-general, program coordinators, coordinators of special services and an assistant director for finance.

The *four regional councils of school committees* include one delegate from each school committee, two provincial trustees from the region and the regional assistant to the provincial director-general. The role of the council is to define the needs of the region and to represent the region to the provincial school board. It participates in the selection process for the regional assistant director.

The *local school committee* consists of representatives of parents and management, and one representative of teachers and students. Its function is to present the local viewpoint to the regional council.

The Manitoba management model stresses the need for *linguistic homogeneity* and consolidation at each regional level. It moves to redress the historic situation of Franco-Manitobans and to promote development of the collectivity. Its principles are clearly articulated.

The major *disadvantage* of the model is that the decision-making areas of the various levels (local, regional and provincial) are not clearly delineated.

b) *Prince Edward Island provincial school board model*

Following the judgment rendered in the *Constitutional Reference* which accorded the minority the right of participation, the Government of Prince Edward Island adopted amendments to the School Act in 1990. The effect of these regulations was to establish a provincial school board.

In 1984, the Société Saint-Thomas d'Aquin of Prince Edward Island had asked Messrs. Lionel Desjarlais and Pierre Michaud to undertake a study which would allow the Society to negotiate minority rights with the Ministry of Education on the basis of a full understanding of the question. The report, entitled "Attentes et aspirations des Acadiens de l'Île-du-Prince-Edouard en matière d'éducation", made two recommendations on the basis of its findings. These involved:

- an *extension of the jurisdiction* of the school board of Unit 5 (Evangeline Region) to all Francophones living anywhere in the province; and
- the need to *create, within the Ministry of Education*, a general management section for French-language instruction (p. 3).

The first recommendation was implemented in 1990. The second has not yet been implemented.

The powers and responsibilities of the Francophone minority's provincial school board are the same as those of the division boards described in sections 13 to 36 of the School Act. The Francophone school board has the added responsibility of opening French-language classes wherever the need is demonstrated and providing transportation to its classes or schools.

The Francophone school board of Unit 5 must also convey information to parents about programs that are offered or are to be offered in French. It plans every new offer of services, but each offer must be approved by the Minister. The designation of new French-language schools is the responsibility of the Minister.

The board of trustees consists of ten members elected from the administrative region formerly known as Unit 5, Evangeline, and five other elected members.

The *advantages* of this model are: geographic consolidation of a small population in a large territory; decision-making power on essential aspects of minority education; increased strength to act.

The *disadvantages* are the following:

- failure to ensure local autonomy;
- requirement of Ministry approval for new offers of service from the Francophone school board;
- no provision for a unit within the Ministry of Education.

2) *Language-based local school boards in association with a provincial general council*

On 14 June 1988, the Government of Saskatchewan signed an agreement with the federal government to strengthen the use of French in the province. In section 3 of this agreement, the province agreed to implement, in consultation with the Francophone community, "a system for the governance of school institutions." [trans.] Following this agreement, Saskatchewan's Minister of Education appointed a 21-member committee. The recommendations of the committee, submitted in its report of June 1989, "A Fransaskois Component for the Saskatchewan School System", were accepted by the Minister of Education.

Two *decision-making levels* are introduced. Administrative, financial and programming services are found at the provincial level. At the local level, the executive committee of the parents' committee manages the day-to-day activities of the school.

The proposed model has the following main characteristics. In a community which already has a French-language school, a local school board, called the "Conseil scolaire fransaskois de (location, name of school)", will be established. It will have five to ten trustees, elected

the third Wednesday of October for a three-year term in accordance with section 32 of the Saskatchewan Education Act. These trustees must, however, be parents and have a child enrolled at the French school.

Fransaskois school boards must exercise the same powers and responsibilities as the other school boards of the province. These powers and responsibilities are described in sections 91 to 95 of the Education Act. The principal responsibility of the Fransaskois school board is to oversee the operation of its French-language school. The board may determine, among other things, the school's denominational status.

On the provincial level, the mandate of the central organization, the "Conseil général des écoles fransaskoises", is to provide support for the local school boards. Two representatives from each school will sit on the Conseil as long as the system has no more than five school boards; when there are more than five school boards, each board will appoint one representative to the Conseil.

The *advantages* of the model are: geographic consolidation of a small population over a large territory, decision-making power on essential aspects of minority education, consolidation at two levels (local and provincial), and increased strength of action.

The *disadvantages* of the model are the following:

- *funding* is not provided on a taxation basis, but rather through a series of grants, with the effect of putting the minority in a position of constant reaction to the provincial government;
- *representativeness* is established on a basis of parents and not the collectivity.

3. *Language-based regional school board and the minority school board*

In general, this kind of model introduces a dualist regime for official language populations. It is more easily introduced in provinces where denominational rights are not entrenched. It has been implemented in New Brunswick.

a) *Language-based school board and the minority school board in New Brunswick*

Following the *Report of the Committee on the Organization and Boundaries of School Districts in New Brunswick*, the New Brunswick Schools Act (1981) stated clearly that all school districts are established on a language basis as French-speaking districts or English-speaking districts.

Anglophone and Francophone school districts are drawn on a *double boundary school map*.

The originality of the New Brunswick system lies in the concept of a minority school board, introduced between 1982 and 1985. In regions where one linguistic group is too small, minority school boards are established in conformity with subsection 18.1 (1)(b) of the

Schools Act, either on the initiative of the Minister, or within a period of six months under the following conditions:

where parents (i) who reside in that school district, (ii) whose language is the official language which is not the official language on the basis of which the school district is organized, and (iii) who are parents of not less than thirty children of elementary school age, submit a request [to the Minister] in accordance with the regulations.

Majority and minority school boards have the same powers. At present, only one minority school board remains: an Anglophone board in Edmundston.

Despite their *advantages*, minority school boards are not equal to the majority structure because of a smaller representation (3 to 5 persons) and the appointment of trustees. That is why a Ministerial Order (1985) changed the three Francophone minority school boards into ordinary school boards.

By establishing a language-based double system, the New Brunswick model makes *equality of services* possible. The model is not viable, however, without a parallel structure in the Ministry, given the centralizing orientation of the province's education system.

b) *Language-based school board and a minority school board in Prince Edward Island*

Following requests from the Société Saint-Thomas d'Aquin de l'Île-du-Prince-Édouard, a report entitled "La gestion scolaire en milieu minoritaire francophone à l'Île-du-Prince-Édouard" was submitted in October 1987 (Arsenault). It described, essentially, a process of adaptation of the New Brunswick model: information meetings, a survey, proposal of a model. This proposal essentially adopted the double boundary school map in association with a clause providing for the establishment of New Brunswick's minority school boards.

This model *failed*, however, to consolidate the minority at the *three decision-making levels*. The regional level is served by a school board, but no provision is made for decision-making consolidation at the local and provincial levels.

4. *Language-based regional school boards*

Four provinces have implemented language-based regional school boards: New Brunswick, Prince Edward Island (before 1990), Ontario and Quebec.

a) *Ontario: Metropolitan Toronto French-Language School Board*

In 1986, Bill 75 modified the Municipality of Metropolitan Toronto Act to create a Metropolitan Toronto French-Language School Board, which began to function on 1 January 1989.

The model of a language-based school board was instituted in Toronto in a *two-tiered system* including seven "sectoral" (regional) school boards and one Metropolitan Toronto School Board made up of representatives appointed by the sectoral boards.

The French-Language School Board has the same rights and responsibilities as the six other sectoral boards and ensures that Francophones receive the complete range of services.

By definition, the model of the language-based regional school board satisfies the principles and objectives of minority management.

The *disadvantages* of the Toronto model are:

- a potentially litigious sharing of financial responsibilities with the school board;
- a lack of decision-making power at the *local level*; and
- chiefly, a failure to consolidate all the persons eligible under section 23, especially Catholic Francophone parents.

b) Ontario: Ottawa-Carleton French-Language School Board

The Ottawa-Carleton French-Language School Board generally follows the model of the proportional and guaranteed “sections”, improving it somewhat, the better to accommodate the denominational rights entrenched by section 93 of the Constitution Act, 1867.

Bill 160, passed in 1988, established a full board with two sections: one separate (Catholic), the other public. Eight trustees are elected to the public section and fourteen to the separate section. They have exclusive management of services to do with classroom teaching and schools under their jurisdiction.

This school management model gives all decision-making powers to the Francophone minority, while consolidating it at two regional levels. It adheres to the principles and objectives of minority management but gives no power to the local level.

c) Quebec: language-based school boards

Historically, the Quebec school system has been organized on a denominational basis. The whole territory is divided by a double boundary school map between Catholic (201), Protestant (29) and multi-denominational (Protestant-Catholic) (4) school boards. Bill 107, Education Act, passed by the National Assembly in December 1988, established language-based school boards and admitted increased local participation for a large part of Quebec’s territory.

The school boards are organized on the basis of language. The Act established a double boundary school map. The case of school boards protected by section 93 is treated differently.

Bill 107 gives the Catholic and Protestant school boards of the cities of Québec and Montréal, dissentient Catholic school boards and dissentient Protestant school boards, the denominational status they had in 1867.

The minority obtains *all the decision-making powers possessed by the majority*.

The great innovation of this model is the increase in local decision-making power through the establishment of orientation committees. The orientation committee is composed mainly of parents, but also includes a minimum of two teachers, one representative of the non-teaching staff, two students from the second cycle of the secondary level (grades 10 and 11), and the school principal.

The management model for Quebec's Anglophone minority, like other models paralleling the majority structure, adheres to the objectives and principles of section 23, but the modalities of its implementation on the Ile de Montréal, where a large part of the Anglophone minority lives, are still uncertain. This model increases the number of school boards in the region and superimposes a new Anglophone school board on existing boards.

Before implementation, the Quebec bill must undergo a constitutional test at the Quebec Court of Appeal. Afterwards, its implementation will show whether this attempt at increasing local autonomy has accomplished its objectives.

3. CONCLUSIONS

Of the 13 models, proposed or in force, only those which have passed the critical threshold of adherence to the principles and objectives of management for official language minorities can effectively deliver the rights conferred. These models all belong to the last typology: structures paralleling the majority structure.

Nonetheless, in the development and improvement of these models, minorities must be particularly attentive to two aspects of management:

- regrouping to make it possible to attain sufficient number: that is, the development of a school map to consolidate pockets of minority population;
- the centralization-decentralization of services: that is, the development of a system allowing the three decision-making levels (local, regional and provincial) to participate actively in the decisions which touch them closely.

Notes

- 1 A complete list of these models is provided in Appendix D. Their bibliographic references are found in the bibliography of the appropriate province.
- 2 For a complete listing of these criteria, see Chapter III, Conclusion.
- 3 To provide a clear and uniform presentation, we use the term "school board" to describe the regional level of management. When we describe the committee of elected members that makes decisions, we use the term "board of trustees".
- 4 The role of orientation committees is described in the section on Quebec's linguistic school boards.
- 5 These two management models will be described later in the chapter.
- 6 These were the Native Survival School and the Saskatoon French School.
- 7 These are the Edmonton Catholic Separate School Board and the Edmonton Public School Board.
- 8 The school has the same name as the association: L'école Georges-et-Julia-Bugnet.
- 9 We have already in this chapter analysed the first of these models: Ontario's protected advisory committees. At the same time we described the structure of the second model, described in the Sullivan Report, the Minority Language Education Council.
- 10 The five organizations were: the Société franco-manitobaine (SFM), the Conseil jeunesse provincial (CJP), the Commissaires d'écoles franco-manitobains (CEFM), the Fédération provinciale des comités de parents (FPCP) and the Éducatrices et éducateurs francophones du Manitoba (EEFM).
- 11 In 1986 this population stood at 6,500 persons, or 5.1% of the total Island population. French is claimed as a mother tongue, but not necessarily as the only mother tongue.
- 12 This organization had been founded the previous year with the purpose of uniting parents' committees of Saskatchewan's official minority.
- 13 In particular, the Commission scolaire Northern Lights in Prince Albert, which serves the Métis and non-status Indian population.
- 14 Each of these divisions includes the following sectors: pedagogical development (study programs and student services), (2) evaluation and advanced training (evaluation of teachers and teacher training) and (3) financial services to school boards.
- 15 It deals with the following services: transportation, material management, manuals, buildings, teaching certificates and personnel administration.
- 16 This model is also being studied in British Columbia, and the Xatruch Report (1990) proposes that three or four regional school boards be developed.
- 17 Two English-language public school boards for Ottawa and Carleton respectively; and similarly two English-language separate school boards.
- 18 It may be recalled that in the case of Bill 75, the opposite was true: in the proportional and guaranteed representation model, all non-specified responsibilities reverted to the plenary board.
- 19 These are integrated Catholic and Protestant boards.
- 20 The Catholic school boards of Greenfield and Portage-du-Fort.

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- 21 The Protestant school boards of Baie-Comeau, Laurentienne and Rouen.
- 22 The hearings took place in January 1990.
- 23 In Ontario, Alberta, Saskatchewan, and Newfoundland/Labrador.
- 24 See "Overview" and "Quebec" sections in Chapter II.

CHAPTER V

Implementation of rights conferred by section 23 of the Charter

CHAPTER V

IMPLEMENTATION OF RIGHTS CONFERRED BY SECTION 23 OF THE CHARTER

I. STUDY FINDINGS

A. Summary of gains made

1. Canada
2. By province and territory

B. Obstacles to implementation of rights conferred by section 23

II. LOOKING AHEAD

A. Estimated number of children eligible for instruction in 1992

B. Process recommended for implementation of section 23

III. RECOMMENDATIONS

This study has taken stock of various aspects of the recognition and implementation of rights conferred by section 23 of the 1982 Canadian Charter of Rights and Freedoms. The purpose of this final chapter is to draw conclusions and make recommendations which may provide guidance for future action by official language minorities and governments.

The chapter has three parts. The first sets out the main findings of the study and gives (A) a summary of gains made in instruction and school management, first for Canada as a whole and then for each province and territory. It then identifies (B) the obstacles to implementation of the rights to instruction and management conferred by section 23 of the Charter.

The second part sets the scene for future action. It provides an estimate of the eligible school enrolment of official language minorities for 1992 and then sets out the steps in the process recommended for implementation of rights conferred by section 23 of the Charter.

The third part formulates recommendations which may help guide and give shape to action by official language minorities and governments in all provinces and territories of Canada.

I. STUDY FINDINGS

A. SUMMARY OF GAINS MADE

A number of changes in education for official language minorities have occurred since the advent of the Canadian Charter of Rights and Freedoms. These changes constitute the gains upon which future demands by official language minorities, as well as government action designed to implement the rights conferred by section 23 of the Charter, will be based. In terms of these new rights, the gains made to date set the scene for changes in education for official language minorities.

1. Canada

Gains made at the national level may stimulate thinking and action by official language minorities and governments in every province and territory. A brief summary follows.

The first gain marks a point of no return: the increased awareness by official language minorities of their needs and rights in education. Minorities across the country are demonstrating much greater militancy, especially since the advent of the Canadian Charter of Rights and Freedoms in 1982. The Charter provides official language minorities with a significant legal instrument, one that gives their claims much more decisive weight. It helps to modify the minority psychology, above all in those Anglophone provinces and territories where the Francophone minority represents less than 3% of the population: the Northwest Territories and Yukon, Alberta, Saskatchewan, British Columbia and Newfoundland¹. Henceforth, provincial and territorial governments must come to terms with this change.

A second gain lies in the courts' interpretation of the rights conferred on official language minorities by section 23 of the Charter. The interpretations given by the courts since 1982 constitute, after eight years, a jurisprudence favourable to the claims of official language minorities. It confirms that they enjoy a right to instruction in their language as well as a right to manage their own educational services. As a result of these court decisions, provincial and territorial governments have been formally advised of the options most likely to respect these rights.

A third gain stems from the spill-over effect of the development of educational services provided to minorities across Canada. The more rapid growth in the provision of service in some provinces and territories, confirmed by the growth in minority school enrolments, constitutes a direct encouragement to those provinces and territories where the offer of services is proportionally lower. The spill-over effect also applies to the minority groups; their demands and actions are based, among other things, on the gains made elsewhere in the country by other official language minority groups.

The major trends in this evolution for Canada as a whole are as follows². In 1990, official language minority educational services are available in every province and territory. There are, however, major differences from one province or territory to another with regard to accessibility to services.

On the basis of data from the most recent census (1986), we have calculated, for each province and territory, the minority school enrolment receiving instruction in their language from a public school as a percentage³ of our calculation of the enrolment eligible under paragraph 23(1)(a) of the Charter. For the purposes of this analysis, the data are presented in two tables. Table V-1 presents enrolments regardless of the type of education offered by school boards: programs delivering instruction to the minority in majority schools, mixed schools, bilingual schools or homogeneous schools. Table V-2 presents only enrolments in public homogeneous schools.

The qualifications expressed in Chapter II remain valid. First, from a methodological perspective, our data are cautious and conservative: (1) the enrolments are not constituted exclusively of eligible children⁴ and (2) the mother tongue criteria is based only on single and double declarations (French and English)⁵. Second, because section 23 has created a new and evolving situation, the actual demand for official language minority educational services may be greater than the current offer of services. Third, since they are free to choose, eligible parents under section 23 of the Charter may opt to enrol their children in majority language programs.

Lastly, it should be noted that paragraph 23(1)(a) is not in force in Quebec at present. Since our purpose here is to evaluate the potential demand for educational services under a complete application of paragraph 23(1)(a), independently of provincial and territorial variations, Quebec data are also presented.

Table V-1

Enrolment* in minority language instruction programs as ratio of eligible enrolment, by province and territory, 1986**

Province/territory	(in %) ***	
Quebec ****	91.5%	(9 children in 10)
New Brunswick	80.4%	(4 children in 5)
Ontario	57.1%	(3 children in 5)
Nova Scotia	34.8%	(1 child in 3)
Manitoba	29.4%	(3 children in 10)
Prince Edward Island	21.8%	1 child in 5)
British Columbia	10.3%	(1 child in 10)
Saskatchewan	7.8%	(1 child in 13)
Alberta	7.5%	(1 child in 13)
Newfoundland	6.1%	(1 child in 16)
Northwest Territories and Yukon	5.3%	(1 child in 20)

* Enrolment in official language minority programs of instruction from grades 1-12 for public institutions completely funded by the state. Quebec enrolment includes kindergarten through grade 11.

** Official language minority enrolment of school age (6-17 years) eligible under paragraph 23(1)(a). Enrolment determined on the basis of a parent's mother tongue (single and double, French and English). Data drawn from a special Statistics Canada compilation, 1986 census.

*** These percentages may be lower in reality since enrolments are not constituted exclusively on the basis of paragraph 23(1)(a) criteria.

**** Paragraph 23(1)(a) is not currently in force in Quebec. The school enrolment eligible under section 23 of the Charter is determined by paragraph (1)(b) (a child whose parent received his or her elementary education in Canada in the minority language) and subsection 2 (a child whose brother or sister received his or her primary education in Canada in the minority language).

Table V-2

Minority enrolment* in homogeneous schools as ratio of eligible enrolment, by province and territory, 1986

Province/territory	Percentages*	
Quebec *	1.6%	(4 children in 5)
New Brunswick	76.3%	(3 children in 4)
Ontario	53.5%	(1 child in 2)
Prince Edward Island	21.8%	(1 child in 5)
Nova Scotia	18.6%	(1 child in 5)
Manitoba	18.2%	(1 child in 5)
Alberta	2.5%	(1 child in 40)
British Columbia	2.4%	(1 child in 40)
Saskatchewan	1.6%	(1 child in 60)
Newfoundland	0	none
Territories and Yukon	0	none

* See Table V-1

The main findings in Table V-1 are as follows:

- enrolment in minority programs in school boards as a percentage of enrolment eligible varies significantly across the country, between 91.5% and 5.3%. There is thus no part of the country where current enrolment in minority programs equals enrolment eligible under paragraph 23(1)(a);
- Quebec has the closest equivalence between the minority enrolment receiving education in its language in school board programs and the enrolment eligible under paragraph 23(1)(a) (91.5% or nine children in ten);
- in the case of the Francophone minorities, New Brunswick has the closest equivalence, namely 80.4% (four children in five);
- in Ontario, Nova Scotia, Manitoba and Prince Edward Island, the equivalence varies between 57.1% and 21.8%;
- in the other provinces and territories, the equivalence is 10% or less: 10.3% in British Columbia, 7.8% in Saskatchewan, 7.5% in Alberta, 6.1% in Newfoundland and 5.3% in the Northwest Territories/Yukon.

The findings in Table V-2 are as follows:

- Quebec and New Brunswick show the highest equivalence between enrolment eligible under paragraph 23(1)(a) and enrolment in homogeneous schools operated by school boards with, respectively, equivalences of 81.6% and 76.3% (around four children in five). It should be remembered that this paragraph does not apply in Quebec;
- Ontario follows with the equivalent of one child in two (53.5%) of those eligible registered in homogeneous schools operated by a school board;
- in Prince Edward Island, Nova Scotia and Manitoba, homogeneous schools operated by school boards have the equivalent of one in five of children eligible under paragraph 23(1)(a);
- lastly, access to homogeneous schools operated by school boards is very low, if not non-existent, in five provinces and territories: Alberta, British Columbia, Saskatchewan, Newfoundland and in the Northwest Territories/ Yukon. Enrolment as a percentage of enrolment eligible is 2.5%.

The gap between enrolment in schools delivering instruction to the official language minority and the enrolment eligible under paragraph 23(1)(a) is due to several factors. The purpose of this study is not to determine the relative importance of these factors (later research may do so). However, our data and analysis do show that the gap between the enrolment eligible under paragraph 23(1)(a) and actual enrolment varies greatly from one province and territory to another. This undoubtedly reflects an evolving situation. Since the proclamation of the Charter and, in particular, section 23, new demands have been made and governments and minorities are learning how to move away from the past.

Indeed, the progress made since 1986 indicates that the process of change underway is already giving tangible results. Table V-3 summarizes⁶ the changes in enrolment in school board minority programs between 1986 and 1988.

Table V-3

Evolution of minority enrolment in public school instruction programs, by province and territory, 1986-87, 1988-89.

Province/territory	Enrolment (grades 1-12) 1986-87	1988-89	% Change (1986-87 and 1988-89)
British Columbia	1 525	1 694	+11.1
Alberta	1 575	1 912	+21.4
Saskatchewan	838	993	+18.5
Manitoba	5 211	5 241	+ 0.6
Ontario	77 412	78 754	+ 1.7
Quebec	111 178	105 141	- 5.4
New Brunswick	46 086	45 396	- 1.5
Prince Edward Island	497	507	+ 2.0
Nova Scotia	3 655	3 497	- 4.3
Newfoundland	68	230	+238.0
Northwest Territories and Yukon	36	128	+255.6
Total			
Francophone minority	136 903	138 352	+ 1.2
Anglophone minority	111 178	105 141	- 5.4

Source:

- * Provincial and territorial ministries of education. Includes public schools providing instruction to the minority: programs in majority schools, mixed schools, bilingual and homogeneous schools, grades 1-12 inclusive or equivalent.

Essentially, the table reveals an increase in six provinces and the two territories. The increase for the minority Francophone enrolment as a whole is 1.2%. The Quebec Anglophone minority enrolment continued its decline: 5.4% in two years.

The progress made in public homogeneous schools for the minority operated by school boards is of particular interest. Table V-4 gives details.

Table V-4

Evolution of minority enrolment in homogeneous public schools, by province and territory, 1986-87, 1988-89

Province/territory	Enrolment (grades 1-12) 1986-87	1988-89	% change (1986-87 and 1988-89)
British Columbia	357	478	+33.9
Alberta	526	943	+79.3
Saskatchewan	166	266	+60.2
Manitoba	3 230	3 170	- 1.9
Ontario	72 555	76 182	+ 5.0
Quebec	99 190	94 830	- 4.4
New Brunswick	43 737	45 396	+ 3.8
Prince Edward Island	497	507	+ 2.0
Nova Scotia	1 959	1 990	+ 1.6
Newfoundland	0	47	—
Northwest Territories and Yukon	0	0	
Total			
Francophone minority	123 027	128 919	+ 4.8
Anglophone minority	99 190	94 830	- 4.4

Source:

- Provincial and territorial ministries of education. Includes public schools, grades 1-12 inclusive or equivalent.

Generally speaking, the growth of enrolments in Francophone minority homogeneous schools established by school boards is greater than that for programs of instruction: 4.8% versus 1.2%. The drop in minority Anglophone enrolments in Quebec is lower in homogeneous schools operated by school boards: 4.4% versus 5.4%.

To conclude the summary of gains made for Canada as a whole, we should note a fourth and last element with which minority groups and governments will have to come to terms: the demonstrated effectiveness of school management models paralleling the majority structure and reserved for the minority. As shown in Chapter IV, the minorities in Canada have to date tried out various management models: advisory, contractual or representational. However, the most effective models are the kind that parallel the majority structure. Such models include provincial school boards, minority school boards and language-based

regional school boards. At present, these are found in three provinces, New Brunswick, Ontario and Prince Edward Island. Others, such as those in Quebec, Saskatchewan, Manitoba, and soon British Columbia, are at the development or implementation stage.

2. By province and territory

This section provides a summary listing for each province and territory of the gains made in educational rights and programs of instruction for official language minorities.

In *British Columbia*, the advances made since 1982 could constitute a base for new measures to serve the province's Francophone minority:

- The Association des parents du programme cadre de français (APPCF) was incorporated on 15 April 1982. The organization is made up of parents and works actively for the recognition of its members' rights and for French language services.
- Since 1987, a Ministry of Education policy, known as "Circular 39", provides for the funding of education for the Francophone minority from public funds and encourages the establishment of homogeneous schools where numbers warrant.
- A court challenge was begun in the Court of Queen's Bench in 1989 seeking recognition of the right to instruction and to the management of Francophone minority education.
- The first three homogeneous schools were founded.
- Between 1986-1989, enrolment in all programs delivering instruction in French to Francophones from grades 1 through 12 increased by 11.1% (169 pupils).
- During this period, enrolment in Francophone homogeneous schools, which offer instruction in French from grades 1 through 10, has increased by 33.9% (121 pupils).
- A regional school board management model to serve the Francophone minority is under development in 1990.

Despite these major gains, only 10.3% of children eligible under paragraph 23(1)(a) (one parent whose mother tongue is French, whether French only or of double mother tongue, French and English) were registered in French language education programs in 1986. This percentage falls to 2.4% in the case of homogeneous schools. Moreover, there are no homogeneous secondary schools. In terms of recognition of rights, provincial education legislation remains silent on the rights of Francophones to instruction and to control of the management of education in French. Thus, progress over the next few years must be in the areas of access to education and recognition of rights as well as a proposal for a school management model for the minority.

In *Alberta*, massive progress has been made since 1982. It constitutes a base for future action:

- The Association Georges-et-Julia-Bugnet was incorporated on 15 March 1983. It has made representations and brought legal proceeding to obtain recognition of the Francophone minority's rights to instruction in French and to management of such education.
- In 1985, the Court of Queen's Bench recognized the right of Francophones to "a degree of exclusive management" of their education.
- Subsequently, the provincial Court of Appeal ruled in 1987 that the Francophone minority had an exclusive right to manage its education. The court held, however, that school enrolment in Edmonton was not high enough to require the establishment of an autonomous system of school management parallel to that of the Anglophone majority.
- The debate was brought before the Supreme Court of Canada and heard in June 1989. The Court must determine the constitutionality of the School Act and will thus also settle the question of the Francophone minority's rights to instruction and management.
- A contractual management model was submitted to the Francophone minority by the Edmonton Catholic School Board.
- An inactive Francophone school board (St. Isidore) was reactivated to manage the Héritage de Jean-Coté homogeneous school.
- In 1988, the rights of Francophones to education in French conferred by section 23 of the Charter were recognized for the first time in the School Act.
- A Ministry policy issued in 1988 confirmed that the number of children eligible for instruction in the minority language could be sufficient to establish homogeneous schools or programs of instruction for the minority in five regions of the province.
- Five homogeneous schools have been founded since 1983.
- Registrations in schools delivering instruction to the minority, from grades 1 through 12, have grown by 21.4% (337 pupils) between 1986 and 1989.
- Registrations in homogeneous schools, where instruction is given from grades 1 through 10, increased by 79.3% (417 students) between 1986 and 1989.

Despite these major gains over a short space of time, the Francophone minority has not obtained sufficient legal recognition given the rights to instruction and management conferred by section 23 of the Charter. In terms of instruction, 7.5% of the school age enrolment eligible under paragraph 23(1)(a) (1,575 children out of 21,093) were studying in 1986 in programs offering instruction to the official language minority. For homogeneous schools, the percentage drops to 2.5%. It is essential that these gaps be reduced if not eliminated in the future.

As for school management, without an autonomous system paralleling the majority school system, Franco-Albertans remain subject to the decisions of majority school boards.

In *Saskatchewan*, the Francophone minority made the following gains between 1982 and 1989:

- In 1982, a contractual agreement designed to give a parents' association a right to oversee the management of a homogeneous school in Saskatoon was signed.
- The Commission des écoles fransaskoises was founded in 1983. It brings together the Francophone parents' committees in the province.
- The Commission has proposed a provincial school commission management model which, even though generally favoured within the Francophone community, has not been endorsed by the Ministry of Education.
- In February 1988, the Court of Queen's Bench confirmed the right of Francophones to manage their homogeneous schools.
- In June 1988, an auxiliary agreement specifically designed to give effect to a school management system run by the Francophone minority was signed between the federal and Saskatchewan governments. The provincial government established a multipartite task force which, in a unanimous report, proposed a management model of a two-tier school board: local school boards in association with a Provincial General Council. Further to the Gallant report, the government created, by Order in Council on 20 September 1989, the Fransaskois School Component Task Force.
- Enrolment in programs of instruction in French has risen by 18.5% (155 pupils) between 1986 and 1989. The French homogeneous schools have had a proportionally more rapid increase: 60.2% (100 pupils).

Despite such gains, registrations in 1986 in programs of instruction in French represented 7.8% of our calculation of the school age enrolment eligible under paragraph 23(1)(a), namely, 838 out of 10,722 eligible children aged from 6-17 years. In the case of homogeneous schools, the percentage drops to 1.6%.

In terms of school management, the model developed in Saskatchewan breaks new ground and the process used in its development is an example of fruitful cooperation between government, professional associations and the minority.

Over the next few years, therefore, efforts must focus on making progress on access to homogeneous schools and, since it is difficult to have one without the other, implementing the school board system as planned.

In *Manitoba*, Francophones made some gains between 1982 and 1989 despite one important setback:

- A Ministry of Education policy defined the status of the Franco-Manitoban school. The policy seeks to develop functionally bilingual

- children through the medium of French-Canadian language and culture.
- A management model of regional school boards under the aegis of a provincial school board was developed in 1988 and is at present the subject of discussion and consultation within the Francophone community.
- At the request of the Fédération des comités de parents du Manitoba, the government brought the question of the interpretation of the rights to instruction and management before the provincial Court of Appeal by way of a constitutional reference. The advisory ruling rendered in February 1990 did not, however, confirm the minority's right to school management.
- The situation concerning minority school enrolment was relatively stable between 1986 and 1989. There was a slight decrease in the homogeneous schools (– 1.9%) but a definite rise in mixed schools (7.7%).

Despite these advances, in 1986 enrolment in minority education programs represented 29.4% of our calculation of the enrolment eligible under paragraph 23(1)(a) of the Charter. Future efforts must focus on increasing this proportion. Moreover, the management model of a provincial school board now being discussed by the Francophone community should be fleshed out and implemented.

Ontario has taken giant steps over the past seven years toward recognition and implementation of the Francophone minority's rights:

- The Ontario Court of Appeal, in a 1984 *Constitutional Reference*, confirmed the right of the Francophone minority to education in French as well as the right to manage such education.
- Two Francophone school boards have since been established, one in Toronto and one in Ottawa-Carleton.
- The Ontario Supreme Court confirmed the right of Francophones to educational services equal in quality to those offered to the majority.
- Bill 75 created French language "sections" within majority school boards entrusted with full management of a number of matters relating to education for the Francophone minority. This approach is known as the "proportional and guaranteed representation" model.
- Complete funding was given to separate (Catholic) secondary schools with the effect that between 1986 and 1989, enrolment in the Catholic system's French secondary schools increased by 243.4% (5,691 pupils) and the number of schools doubled. This enrolment was essentially transferred from the non-denominational public sector.
- Enrolment in minority education programs as a whole (including homogeneous schools) increased by 1.7% between 1986 and 1989 (1,342).
- Eighteen new French-language homogeneous schools opened between 1986 and 1989. Overall, homogeneous school enrolment increased by 5.0% (3,627 pupils) during this period.

However, given the rights to education and management conferred by section 23 of the Charter, progress remains limited. Despite the major increase in enrolment in minority language education programs, the latter represented in 1986 only 51.1% of our calculation of the enrolment eligible under paragraph 23(1)(a) of the Charter: 77,412 children out of 135,612. Steps must thus be taken over the next few years to increase Francophone enrolment.

In the school management area, the drawbacks of the "proportional and guaranteed representation model" set up in the province have been demonstrated in Chapter IV. The model does not, in many respects, fully meet the obligations flowing from section 23, and does not answer the Francophone minority's needs, mainly because it does not provide for exclusive decision-making power over financial and general administration. It would be clearly preferable to transform this system into regional linguistic school boards over the next few years. It would also be desirable to broaden the authority of the administrative division responsible for French-language education in the Ministry of Education and allocate it the corresponding resources.

In *Quebec*, the changes that have taken place since 1982 concerning Anglophones' education rights have been mainly in the area of school management:

- In 1984, the Supreme Court of Canada ruled that all Anglophones who had received their primary education in Canada had the right to educate their children in English. The effect of the judgment was to invalidate the "Quebec clause", the clause in the Quebec language law (Bill 101) which then limited access to education in English to children whose parents had studied in English in Quebec.
- Bill 107, adopted by the National Assembly in December 1988, provides that in future school boards will be created based on linguistic rather than religious criteria. In principle, the Bill will be implemented once its constitutionality has been determined by the courts.
- In 1986, the enrolment receiving education in English as defined under paragraph (1)(b) and subsection 2 of section 23, that is, children with one parent who had been or is being educated in English in Canada or with a brother or sister who had been or is being educated in English, numbered 111,178 pupils (school board sector). This number is greater than the total of English mother tongue school (age 6-17 years) children in Quebec (86,946) recorded by the 1986 census.

It should be remembered that, unlike the situation in the other provinces and territories, paragraph 23(1)(a) of section 23, which gives access to education in the minority language on the basis of parental mother tongue, does not apply in Quebec. In Chapter II, it was calculated that if paragraph 23(1)(a) did apply in Quebec the enrolment in 1986 would have numbered 121,513. However, 111,862 children were registered in minority programs

run by school boards established under current criteria. Minority program enrolment thus represented 91.5% of the eligible enrolment. From this point of view, the situation of the Anglophone minority in Quebec is much better than that of the Francophone minorities in the other provinces and territories.

On the other hand, it should be stressed that between 1971 and 1986 the Anglophone minority enrolment declined by half, from 248,855 to 111,862⁷ (see Table II-3). According to the English-language minority, the decline has brought about a marked deterioration in the quality of its education⁸ due to the loss of such important services as those provided by nurses, social workers, psychologists and guidance counsellors.

Moreover, until the adoption of the clauses in Bill 107 dealing with language-based school boards (assuming the Supreme Court finds them constitutional), the Anglophone minority school system will continue to lose its linguistic homogeneity.

All things considered, the Anglophone minority believes that if its educational services are to improve in the future, it will be necessary to amend the Constitution Act, 1867 to enable Bill 107 to be adopted in its entirety. It would also be advisable to establish an autonomous structure for the Anglophone minority within the Ministry of Education.

In *New Brunswick*, the province's status as officially bilingual has been strengthened since the advent of the Charter in 1982, and the Acadian community has consolidated its gains in education:

- A Court of Queen's Bench judgment confirmed that immersion programs do not meet the educational needs of the minority.
- Bilingual schools are disappearing. By 1990, only one bilingual school will still exist (and 99% of its students are already Francophone).
- Three Francophone minority school boards set up in 1981 have been transformed into standard school boards. The change has provided a structure parallel to that of the majority for smaller communities.
- The administrative framework governing budgetary allocations to school boards has been revised to provide for greater fairness toward small school districts previously penalized because of low enrolments.
- Enrolment in all programs of instruction in French in 1988 represents 80.4% of our calculation of the enrolment eligible under paragraph 23(1)(a).
- The great majority of this enrolment is in homogeneous schools (76.3% of enrolment eligible under paragraph 23(1)(a)). It should also be noted that while provincial enrolment fell overall by 2.0% between 1986 and 1989, homogeneous French school enrolment increased by 3.8%.

Despite these very major gains, access to instruction in French remains limited due to the fact that admission requirements for French schools require a child to have a knowledge of

French. This partially explains why 19.6% of eligible children under paragraph 23(1)(a) are still not registered in education programs for the minority. It would seem appropriate to establish some mechanism over the next few years to allow these children, if their parents so wish, to gain access to education in French.

In *Prince Edward Island*, progress has been significant since 1982:

- A reference to the Court of Appeal established that it is up to the provincial legislature to set the minimum number of children required for provision of education in French. On the other hand, the minority was invited to participate in the development and dissemination of programs.
- Two management models were discussed at length within the Acadian community. One consisted of a provincial school board while the other was a double boundary school map in association with minority school boards.
- A 1988 amendment to the School Act confirmed the right of the Francophone minority to instruction in French as well as its right to participate in the development and implementation of such instruction.
- An amendment to the school regulations set up a provincial school board in 1990. The Unit 5 (Evangeline) school board is henceforth responsible for education in French across the province.
- Enrolment in the two schools delivering instruction to the minority increased by 2% (10 pupils) between 1986 and 1989.

Despite these gains, in 1986 only 21.8% of the enrolment eligible under paragraph 23(1)(a), namely 497 children out of 2,280, received instruction in the minority language. Consequently, future progress must be in the area of access to instruction in French.

In *Nova Scotia*, the following gains have been made since 1982:

- The Ministry of Education formally gave the Acadian school the task of helping maintain the Acadian language and culture and assisting Acadians to take full advantage of their language rights.
- Parents in Sydney won their case before the provincial Court of Appeal. The court determined that their number of children was sufficient to obtain educational services in French (although the number was judged insufficient for a homogeneous school).
- Nineteen schools were designated Acadian schools by the Lieutenant Governor in Council on the recommendation of the Minister of Education.
- Enrolment in homogeneous Acadian schools increased by 1.6% (31 students) between 1986 and 1989.

Despite these gains, in 1986 only 34.8% of the enrolment eligible under paragraph 23(1)(a), namely 3,655 children out of 10,516, received instruction in the minority language. There

is no homogeneous secondary school available to serve this enrolment. Thus a major improvement is needed in access to services.

No model has yet been developed for participation by the Francophone minority in the management of educational services. Nonetheless, the Clare-Argyle school board is effectively Francophone.

In *Newfoundland*, gains have gradually been made since 1982:

- The *Report of the Policy Advisory Committee on French Programs* recognized the right of the Francophone minority to instruction in French within homogeneous institutions.
- Parents in St. John's asked the courts to legally recognize the Francophone minority's rights to education.
- A special educational consultant position was created in the Department of Education to consult with the Francophone community and then develop French programs.
- A Francophone community school centre was opened in Mainland in September 1988.
- An immersion school was changed into a mixed school in Cap Saint-George.
- Enrolment in minority education programs increased overall by 238% between 1986 and 1989 (162 pupils).

However, in 1986 only 6.1% of our calculation of the enrolment eligible under paragraph 23(1)(a), namely 68 out of 1,117 children, received instruction in French.

Moreover, except for advisory committees of Francophone parents working with some anglophone school boards, no school management model that would involve the Francophone minority has been developed.

Three matters relating to the Francophone minority's educational rights must be improved in this region of the country over the next few years: recognition of such rights in the Schools Act, access to quality education in homogeneous schools and lastly implementation of an effective model of school management which would include active participation by Francophones.

In the *Northwest Territories* and *Yukon*, the principal gains made since 1982 are as follows:

- A Yukon Department of Education directive stipulated that in future instruction in French will be provided where numbers warrant.
- A homogeneous school, *Ecole Emilie-Tremblay de Whitehorse*, is being established in Yukon.

— In 1989, 43 pupils had access to education in French in the Northwest Territories; in 1982 there were no French education programs.

However, in 1986 in the Northwest Territories, no child among the 459 eligible under paragraph 23(1)(a) received instruction in the minority language. In Yukon in 1986, only 16.7% of the eligible enrolment, namely 36 out of 215 children, received instruction in French. Enormous improvements are necessary in this part of the country in terms of access to education in French for the Francophone minority.

With regard to participation by Francophones in school management, only Yukon, through a new Education Act, is preparing to implement the necessary measures.

B. OBSTACLES TO IMPLEMENTATION OF RIGHTS CONFERRED BY SECTION 23

There are two main obstacles to the implementation of rights conferred under section 23.

First, there is *insufficient information distributed on the needs, aspirations and education rights of the official language minorities*. This is as much the case among the majority — the public at large, governments, media — as among the minority. Although some members of the minority are very involved and aware of all aspects of education in their language, others ignore their rights and underestimate the importance of asserting their culture, taking charge of their education and instructing their children in the minority language. More effective distribution of information among the majority would make for greater sensitivity to the minorities' situation and encourage greater tolerance and understanding.

To overcome this obstacle, an effective plan should be developed to disseminate information to both the minority and the majority. The plan should be developed with the help of communications experts.

The second obstacle to implementation of section 23 stems from *the difficulty of joint action by the federal and provincial governments* in this area. Given the nature of the Canadian federation, with both federal and provincial levels of jurisdiction, coordination and joint action are often difficult to achieve. This is especially the case in areas such as education, which are the constitutional domain of the provinces. Each government therefore tends to act alone in response to the circumstances of the moment or to local situations. The national dimension, which has historically been the context in which official language minority issues are addressed, is missing.

To give full effect to the rights of the minorities across Canada, new or strengthened intergovernmental coordination mechanisms are required to counter the trend toward fewer policy initiatives and unconcerted action. A two-fold approach is needed: (1) among provincial governments as a whole through the Council of Ministers of Education;

(2) between the federal government and each provincial government through agreements that advance matters while avoiding jurisdictional conflicts (for example, the agreement recently concluded between the federal and Saskatchewan governments).

II. LOOKING AHEAD

This section presents a projection for 1991 of enrolment eligible under paragraph 23(1)(a). The objective is to estimate the future educational needs of official language minorities and to offer the services required to implement the rights given by section 23. This is followed by a proposal for a process designed to encourage the full achievement of this enrolment's educational rights.

A. ESTIMATED NUMBER OF CHILDREN ELIGIBLE FOR INSTRUCTION IN 1992

Table V-5 shows, by province and territory, the projected eligible enrolment for 1992. The projection is based on a special Statistics Canada compilation⁹ and assumes that the enrolment includes children aged 0-11 at the time of the 1986 census. These children will reach school age (6-17 years) in 1992 and will thus form the enrolment eligible under paragraph 23(1)(a). The calculation also assumes that the number of children stays unchanged between 1986 and 1992; it therefore ignores new arrivals and deaths. It does not take into account interprovincial migration, but assumes that the number of such children remains the same in each province and territory.

Table V-5

Projected eligible enrolment*, 1992

	1986**	1992***	Difference (%) 1986-1992
British Columbia	14 815	13 767	- 7.1
Alberta	21 093	22 628	7.3
Saskatchewan	10 722	10 319	- 3.8
Manitoba	17 754	16 743	- 5.7
Ontario	135 612	129 861	- 4.2
Quebec****	121 513	125 127	2.8
New Brunswick	57 331	54 089	- 5.7
Prince Edward Island	2 280	1 838	-19.4
Newfoundland	10 516	9 546	- 9.2
Newfoundland	1 117	1 106	-0.1
Yukon	215	258	20.0
Northwest Territories	459	519	13.1
Total Francophone minority	271 914	260 673	- 4.1
Total Anglophone minority	121 513	125 127	3.0

Source:

Statistics Canada, 1986, special compilation Table No PO 3272, 17 November 1988. M. Paillé's analysis (1990).

* Number of children 6-17 years of age with one parent (Canadian citizen) of minority mother tongue: includes single (English or French mother tongue) and double responses (English and French).

** Compiled from census data.

*** Number projected on the basis of 1986 census data. Number of eligible children who were 1-11 years of age in 1986. These children will be 6-17 years of age in 1992. This projection does not take account of interprovincial mobility, immigration or mortality.

**** At present, paragraph 23(1)(a) does not apply in Quebec.

Table V-5 suggests the following:

- the enrolment eligible for education in French should decline by 4.1% in English Canada between 1986 and 1990 while the enrolment eligible for education in English in Quebec, if paragraph 23(1)(a) were applicable, should increase by 3.0%;
- the decline in the enrolment eligible for education in French in English Canada will occur in most provinces. Proportionally speaking, it will be greatest in Prince Edward Island at 19.4%;
- leaving aside the territories, the only increase (7.3%) in the enrolment

eligible for education in French will likely be in Alberta.

The decline in eligible enrolment among the Francophone minorities takes on much greater proportions when placed in the context of a 3.2% increase in the total Canadian school-age (6-17 years) population during the same period (Paillé, 1990).

In short, these data highlight the urgent need, especially among the Francophone communities in Canada, to implement the education rights conferred on official language minorities under section 23.

B. PROCESS RECOMMENDED FOR IMPLEMENTATION OF SECTION 23

There are two complementary approaches to giving effect to rights under section 23. Both are available to the partners involved in implementing such rights — minorities and governments.

The first approach is *dialogue*. Dialogue was difficult for a long time because the minorities were for all practical purposes powerless before governments. The Canadian Charter of Rights and Freedoms transformed matters in this respect in 1982 by entrenching official language minority education rights in the Constitution. The Charter provides minorities with a basic legal instrument capable of modifying relations between them and governments so that they can eventually obtain fair treatment equal to that enjoyed by the majority.

The second approach is a *court action*. This approach must be understood as a legitimate step intended to clarify the interpretation of a legal text. In this sense, it may be useful for all the parties involved. Chapter I noted the major legal gains provided by the courts with regard to interpretation of minority rights.

Dialogue and court action are complementary in that one is not really effective without the other. On the one hand, as we have noted, dialogue becomes much more rewarding when minorities can ultimately appeal to the courts. On the other hand, going to court may turn out to be much less effective if it is not part of a process of dialogue. Judicial recognition of rights must give rise to concrete policies and projects. This is a process which involves informed cooperation and active and dynamic participation by all the partners concerned.

III RECOMMENDATIONS

We now make several recommendations which may provide guidance in implementing the rights conferred by section 23 of the Canadian Charter of Rights and Freedoms. The recommendations take into account the essential elements summarized in this chapter: the

overall objectives of section 23; minority demands; the gains made in the implementation of minority education rights; the obstacles to implementation of rights and the process recommended for giving effect to them.

Recommendation 1

It is recommended that, in each province and territory, a *section 23 implementation plan* be developed between 1989 and 1992. This plan must provide for:

- an accurate determination, by region, of the *enrolment eligible* under section 23 as set out in this study;
- a *school map* clearly identifying the concentrations of the minority population;
- an enumeration of the localities, towns and regions where *homogeneous schools* must be reserved for members of the official language minority;
- *alternative programs of education* where homogeneous schools cannot be established;
- a *management model for homogeneous schools* parallel to the majority school structure with separate local, regional and provincial decision-making levels;
- an effective management model for *programs of education that offer alternatives to homogeneous schools*; the model should be a variant of the structures paralleling the majority school structure;
- an estimate of *costs* to be met to ensure, in accordance with the implementation plan, education and management of educational services for official language minorities;
- a *decision-making structure within the ministries of education* charged exclusively with managing official language minority educational services;
- a *draft amendment to the education legislation* designed to ensure legal recognition of the rights conferred on official language minorities under section 23 of the Charter.

Recommendation 2

It is recommended that *bilateral agreements* be signed between the federal government and each provincial and territorial government in order to bring about development of the section 23 implementation plan.

Recommendation 3

It is recommended that *further research* be undertaken to document the reasons for the gaps observed between the enrolment eligible under paragraph 23(1)(a) and the actual enrolment in programs delivering instruction to the minority, especially in homogeneous schools. In this respect, such research should also explain the significant variations observed between provinces and territories. Its findings will ultimately make possible the establishment of concrete and achievable objectives for providing service to the enrolment eligible under section 23.

Recommendation 4

Given its importance in the development of jurisprudence in the area of minority rights, it is recommended that the *Court Challenges Program* remain in force until an adequate implementation plan has been developed in consultation with all parties and broadly implemented in each province and territory. It is also recommended that the program's mandate be widened so that it may provide official language minorities and governments with adequate legal documentation and consultation services, particularly for groups and individuals whose rights remain unrecognized.

Recommendation 5

It is recommended that *information kits* be prepared to better inform members of the minorities of the importance of taking advantage of an education in their language.

Recommendation 6

It is recommended that minority associations organize an information campaign for members of the majority designed to inform them of the reasons underlying the demands of the official language minorities.

Notes

- 1 See Chapter II.
- 2 Discussed in detail in Chapter II.
- 3 Chapter II provides the complete data used as a basis for the percentages. See in particular Tables II-5 and II-6. It should be remembered that these percentages present an optimistic estimate of the situation in that school enrolments are, in practice, made up not only of eligible children but also of other children admitted to minority education programs.
- 4 The services offered to the minority appear therefore more complete than they are in reality since, having excluded from the enrolments all children not of the minority mother tongue for variable *c* or ineligible under paragraph 23(1)(a) for variable *e*, these enrolments would have been lower.
- 5 As already explained, we could have taken all the minority mother tongue declarations, whether single, double or triple. The most restrictive approach, only using single mother tongue declarations, would probably contravene the spirit and the letter of section 23.
- 6 For more details, see the section in Chapter II on each province and territory.
- 7 Table III includes school board and Ministry of National Defence enrolment.
- 8 See the Quebec section in Chapter II.
- 9 Table No. PO 3272, 17 November 1988. The data were analysed by Mr. Michel Paillé.

APPENDIX A

“MINORITY LANGUAGE EDUCATIONAL RIGHTS”

Section 23 of the Canadian Charter of Rights and Freedoms

23. (1) Citizens of Canada

- (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
- (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

- (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
- (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

APPENDIX B

SUPREME COURT DECISION OF 15 MARCH 1990 AND ITS IMPACT ON THIS STUDY

The Supreme Court of Canada handed down its decision in the important case of *Mahé et als v. H.M. the Queen in right of Alberta* on 15 March 1990, just as the finishing touches were being put to this study. Generally speaking, the interpretations and principles set forth in the Supreme Court decision confirm our own analysis. This appendix supplements Chapter I by providing a description of the decision and setting out the points which confirm the analysis presented in subsequent chapters.

First, the unanimous decision of the Supreme Court of Canada confirms the objectives of section 23 of the Canadian Charter of Rights and Freedoms and remains true to the section's historical roots. Chief Justice Dickson stated:

In my view the appellants are fully justified in submitting that "history reveals that s. 23 was designed to correct, on a national scale, the progressive erosion of minority official language groups and to give effect to the concept of the "equal partnership" of the two official language groups in the context of education". (p. 15)

This statement sets out the three objectives of section 23 recognized by the Court. First, the Court says, section 23 relates to the maintenance and vitality of the language and culture of Canada's official language minorities. It is also designed to apply the concept of "equal partnership" to the two official language groups with regard to education. Thirdly, section 23 is remedial in scope: it requires that measures be taken from coast to coast to correct the progressive erosion of official language minorities. The Court concluded that section 23 provides new guarantees which, as Justice Kerans of Alberta noted, underline the inadequacy of the present system.

Four general principles govern the interpretation of section 23:

- language and culture are intimately linked; the vitality of the official language minorities as well as section 23 are based on these two elements (p. 14);
- mother tongue instruction and minority schools play a fundamental role in the maintenance and vitality of the official language minorities (p. 14);
- the courts must interpret section 23 cautiously while giving it the force required to meet its objectives (p. 16);
- section 23 incorporates the concept of equality between the two official language groups and it is therefore not helpful to invoke section 15 of the Charter in interpreting rights (p. 20).

The Court established three principles to guide the provinces in applying section 23:

- the quality of education given to the minority must, in principle, be equal but not necessarily identical to that given to the majority (p. 28).
- adequate public funding is guaranteed (pp. 26, 44);
- governments may give more than the minimum required by section 23 (pp. 17, 29, among others);

In addition to these three principles, the Court examined at length the question of “where numbers warrant” in the application of the rights conferred. It first drew up a new definition of the “sliding scale” criterion which now “guarantees whatever type and level of rights and services is appropriate in order to provide minority language instruction for the particular number of students involved” (p. 17). The principles and objectives set out above must be taken into account in order to determine the rights and services required in each specific situation. The Court also added practical considerations: costs, a reasonable offer of services and the pedagogical appropriateness of the services offered. However, it added that “the remedial nature of s. 23 suggests that pedagogical considerations will have more weight than financial requirements in determining whether numbers warrant” (p. 35).

The Court clarified two other aspects of “where numbers warrant”. First, the calculation of numbers is not limited by existing school district boundaries (p. 35) and may, if necessary, be extended to the province as a whole. By way of example, the Court added that where numbers are minimal, “it may be necessary to provide transportation for students, or perhaps to provide boarding, in order to meet the requirements of section 23” (p. 36). It also specified that the relevant figure is the number of persons that will in the end benefit from the services offered. Two parameters may be used to estimate this number: the known demand for service and the number of eligible children (p. 34).

As for the specific rights conferred, the Court found that section 23 confers a general right (p. 16) to instruction in the minority language. Paragraph 23(3)(a) deals with instruction and programs where numbers warrant; thus, since “instruction must take place somewhere...the right to instruction includes an implicit right to be instructed in facilities” (p. 20).

The very structure of section 23 implies that paragraph 23(3)(b) includes rights over and above the general right to education under paragraph 23(3)(a), namely control and management of education programs where numbers warrant. Thus, taking as a basis the fundamental objective of section 23, Chief Justice Dickson declared: “Such management and control is vital to ensure that their language and culture flourish” (p. 22). It is therefore essential that the linguistic minority control those aspects of education that relate to its language and culture. As a minimum, representatives of the minority must have exclusive decision-making authority over the following five areas:

- expenditure of funds provided for instruction and facilities;
- appointment and direction of those responsible for the administration of such instruction and facilities;
- establishment of programs of instruction;
- recruitment and assignment of teachers and other personnel;
- making agreements for education and services delivered to minority language pupils.

Different approaches may nonetheless be taken to provide the minority with exclusive management of education. Where numbers warrant, an independent school board is required. However, in the case at hand, that of Edmonton, the minimum number of 242 pupils given in the 1984 request for services and the number which, according to the Court's calculations, would in fact attend the school (p. 38), require at very least minimum proportional representation of the minority on the majority school board.

What are the consequences of this decision for our study? First, the principles and objectives set out by the Court confirm those used as the starting point for this study on instructional services and school management.

As regards where numbers warrant, Chapter II presents statistics showing the number of children registered in programs of instruction in each province and territory. Given the remedial character of section 23, we also present a methodologically conservative compilation of the number of pupils eligible under this section. The Supreme Court of Canada establishes the relevant number — in other words, the definitive number of pupils that would take advantage of instruction offered — as being between the known *demand* for service and the number of *eligible children*. The Court therefore recommends the calculation of a “median” (p. 34). To facilitate the planning of services to be offered to the minority from as estimate of this “median”, we provide a conservative number of eligible children based on our methodology and a conservative number of enrolments relative to demand.

Our analysis of school management models for official language minorities (Chapters II and IV) is also based on principles confirmed by the Supreme Court. Moreover, the decision-making areas exclusively reserved for the minority chosen by the Supreme Court are, as it happens, exactly those selected by Judge Purvis of the Alberta Court of Queen's Bench. Our own analysis was based on these same decision-making areas, so Chapter IV is doubly validated. However, our evaluation of existing or proposed management models led to a different conclusion from that of Chief Justice Dickson: the models are not a uniformly effective means of achieving the objectives of section 23. In light of experience and the principles set out, the proportional and representational models applied in Canada have not reached the point at which they could be considered effective measures for ensuring the maintenance and vitality of the official language minorities. On the other hand, we found

that models paralleling the majority structure are effective. Flexible implementation of a model parallel to the majority structure, adapted to small numbers, would be a better means of giving effect to the rights confirmed by the Supreme Court.

The application of section 23 following the Supreme Court's decision will, as history demands, continue to evolve. It is our hope that this work will also contribute to some degree by providing concrete data that will further a more complete implementation of the rights and objectives of section 23.

APPENDIX C

LIST OF JUDGMENTS AND DECISIONS CITED

I. BEFORE 1982, GENERAL

Ottawa Roman Catholic Separate School Trustees v. Mackell (1917) A.C. 76, 32 D.L.R. 1 (C.P.)

II. AFTER 1982, GENERAL

Southam Inc. v. Hunter (1984) 55 A.R. 192.

R. v. Big M. Drug Mart (1985) 1 S.C.R. 295

Société des Acadiens du Nouveau-Brunswick et al. v. Minority Language School Board no. 50 et al. (1986) 1 S.C.R. 549

Reference on Funding of Catholic Schools in Ontario (1987) 1 S.C.R. 1148

Quebec Association of Protestant School Boards v. A.G. Québec, (1989) Supreme Court of Canada.

The Law Society of British Columbia et al. v. Mark David Andrews et al. (2 February 1989) Supreme Court of Canada.

III. AFTER 1982, RELATIVE TO SECTION 23

Quebec Association of Protestant School Boards v. A.G. Québec (1982) S.C.

Société des Acadiens du Nouveau-Brunswick v. Minority Language School Board no. 50 et al. (1983) 48 N.B.R. (2d) 361.

Quebec Association of Protestant School Boards v. A.G. Québec (1984) 2 S.C.R. 66

Reference re Education Act of Ontario and Minority Language Education Rights (1984) 10 D.L.R. (4th) 491

Mahé et al. v. the Queen (Alberta) (1985) 64 Alberta Reports 35

Marchand v. Simcoe County Board of Education (1986) 55 O.R. (2d) 638

Marchand v. Simcoe County Board of Education (1987) 44 D.L.R. (4th) 171

Mahé et al. v. the Queen (Alberta) (1987) C.A. Alberta.

Whittington v. Board of School Trustees of School District no. 63, (Saanich) (1987)

Laurent Lavoie et al. v. A.G. Nova Scotia and Cape Breton District School Board (10 February 1988) 84, N.S.R. (2nd) 387

Laurent Lavoie et al. v. A.G. Nova Scotia and Cape Breton District School Board (11 March 1988) 84, N.S.R. (2nd) 387

Laurent Lavoie et al. v. A.G. Nova Scotia and Cape Breton District School Board, 29 August 1988 84, N.S.R. (2nd) 387

Commission des écoles fransaskoises et al. v. A.G. Saskatchewan (1988)

Reference re Education Rights (1988) C.A., P.E.I.

Laurent Lavoie et al. v. A.G. Nova Scotia and Cape Breton District School Board (1989) C.A. (Nova Scotia).

Reference re the Constitutional Questions Act, Manitoba Court of Appeal, opinions of judges Monnin, Hall, O'Sullivan, Philp and Twaddle, 6 February 1990.

APPENDIX D

LIST OF MODELS IN CHRONOLOGICAL ORDER

I. MODELS IN FORCE

- 1981 *New Brunswick*. Schools Act implementing the recommendations in the *Report of the Committee on the Organization and Boundaries of School Districts in New Brunswick*. Model of minority school boards with a double boundary map and language-based regional school boards.
- 1982 *Ontario*. *Report of the Joint Committee on the Governance of French-Language Elementary and Secondary Schools*. Protected advisory committee model.
- 1982 *Saskatchewan*. St. Paul's Roman Catholic Separate School Division #20 of Saskatchewan. "Agreement between Le conseil de l'école canadienne-française de Saskatoon inc. and The Board of Education of the St. Paul's Roman Catholic Separate School Division #20 of Saskatchewan". Contractual model.
- 1986 *Ontario*. Government of Ontario. Bill 75. Proportional and guaranteed representation model.
- 1986 *Ontario*. Bill 75 established the Metropolitan Toronto French-Language School Board. The document "Preparing for the Future" indicates the modalities. Language-based regional school board model.
- 1988 *Ontario*. Government of Ontario. Bill 109. Language-based regional school board model for Ottawa-Carleton.
- 1988 *Quebec*. Government of Quebec. Education Act. Language-based regional school board model.
- 1990 *Prince Edward Island*. Government of Prince Edward Island. School Act Regulations Amendment. Provincial school board model.

II. PROPOSED MODELS

- 1984 *Ontario*. *Final Report of the Committee on the Governance of Minority Language Education*. Direct representation within a majority school board model.
- 1984 *Prince Edward Island*. Desjarlais, L. and Michaud, P. "Attentes et Aspirations des Acadiens de l'Île-du-Prince-Edouard". Provincial school board model.
- 1987 *Prince Edward Island*. Arsenault, P. "La gestion scolaire en milieu minoritaire francophone à l'Île-du-Prince-Edouard". Regional or minority school board model.
- 1987 *Alberta*. Edmonton Catholic School District. "Management of Official Minority Language Education". Contractual model.

- 1988 *Manitoba*. Comité ad hoc de planification et de gestion scolaire au Manitoba. "La gestion des écoles: un modèle à suivre". Provincial school board model.
- 1989 *Saskatchewan*. Coordinating Committee for the Governance of Francophone Schools by Francophones. "Une composante du système scolaire de la Saskatchewan au service des fransaskois". Local school boards in association with a provincial council.

APPENDIX E

QUESTIONS FOR DISCUSSION

The questions set out below may be useful in clarifying the information obtained from each section or chapter. They can also be used to help stimulate group discussions.

CHAPTER I

JURISPRUDENCE: SECTION 23 OF THE CHARTER

1. Who may claim rights under the eligibility criteria in section 23?
2. Does the education offered to the official minority in your province meet the criteria in section 23?
3. Do numbers warrant one or more autonomous facilities in your community?
4. How has the provincial government been made aware of official minority needs in your community?
5. What control and management measures have been proposed to the provincial government?
6. What measures could be taken to meet the needs of the minority?

CHAPTER II

STATE OF EDUCATION OF THE OFFICIAL LANGUAGE MINORITIES IN CANADA

1. What are the legal provisions in your province or territory governing minority language education?
2. What do you consider to be the reasons for the difference between enrolment in minority programs and enrolment eligible under paragraph (1)(a) of the Charter?
3. What do you consider to be the reasons for the difference between enrolment in minority homogeneous schools and enrolment eligible under paragraph (1)(a) of the Charter?

4. Do minority parents make sufficient use of services offered in the language of the minority?
5. Are the services in your area sufficient to meet the needs of the minority?
6. What should be the admission criteria for homogeneous schools?
7. What steps should be taken to obtain better educational services for the official language minority?

CHAPTER III

FROM INSTRUCTION TO SCHOOL MANAGEMENT IN A MINORITY SETTING: THE ISSUE AND ITS COMPONENTS

A. THE ISSUE OF INSTRUCTION AND SCHOOL MANAGEMENT

1. What are the reasons motivating the minorities to claim their rights to education in the language of the minority and to management?
2. What does “management” mean to you?
3. Give some examples of decisions that must be made by the official minority in exercising school management?
4. Why is management important?
5. What are the obstacles preventing management by the official minority? How can they be overcome?

B. COMPONENTS OF CONTEMPORARY SCHOOL MANAGEMENT

1. Does the school in your community have a parents’ committee? Have you participated in the committee? What role does it play? What role could it play?

2. In your opinion, is local autonomy desirable? To what extent?
3. What are the advantages of a regional decision-making level? Is it appropriate in your setting? How many regional groups do you consider are required for the minority in your province or territory?
4. How is the Ministry of Education in your province meeting the needs of the official minority? What services does it offer?
5. What resources are currently available to the official minority?
6. Which of the services set out in Table III-2 do you know from personal experience?
7. Which services do you consider most important for the minorities?

C: SCHOOL MANAGEMENT FOR OFFICIAL LANGUAGE MINORITIES

1. Is the homogeneity principle important to the official minority in your province? Why?
2. Is the principle of consolidation of services important? Why?
3. Is financing a problem in the school unit that you know?
4. What do you consider essential components of school management? Which ones can be implemented? In which stages?
5. Which components can be shared?

CHAPTER IV

EXISTING AND PROPOSED ORGANIZATIONAL MODELS

1. Which of the typology of proposed models is in effect for the official language minority in your region? Advisory? Contractual? Representational? Parallel to the majority structure?

2. What are the advantages and disadvantages of the model?
3. What models are you aware of? What are their advantages and disadvantages?
4. What are the main needs of official language minorities in the area of school management?
5. In your view, which components of school management could be managed locally? regionally? provincially?
6. Using the “The Decision is Yours” grid and principles, identify the decision-making levels that correspond to your opinion.

Table Appendix E
Components of a full-scale school management system – “The Decision is Yours”

1. Teaching	2. Finance and general administration	3. Personnel	4. Material management
Pre-school teaching	Administration	Administration	Administration
• language, mathematics, music, social skills, art, science, motor skills, religion	Budget	Work organization	Supply
Elementary teaching	Internal control	Recruitment and selection	Shipping
	External control	Assignment and salaries	Maintenance and repair
	Payroll	Evaluation	– buildings, grounds
• regular	Collection of revenue	Accreditation (provincial)	Janitorial services
• students with special needs/gifted	Boards of trustees and boards of directors (election and/or appointment)	Professional development	Energy consumption
Secondary teaching	General management	Organizational development	– heat, electricity
• regular	Corporate secretariat		Leasing/construction of buildings
– courses	Debt servicing		Safety and security
• vocational	Orientation of educational projects		– insurance, surveillance
– shops	Policy		School and municipal transfers
– common-core syllabus	Informatics		– exchanges of service
• students with special needs/gifted			Electronic communications
• groups of special students			– telephone, intercom
Language-upgrading classes			
Continuing education			

5. Student services	6. School-community relations	7. Complementary activities	8. Programming	9. Evaluation and research
Guidance <ul style="list-style-type: none"> • orientation • psychological counseling • academic information • health • pastoral care • student activities 	Parent committees School committees Community schools Joint municipality-school board committee	Library Audio-visual Computers and informatics	Program development School evaluation Evaluation of teaching materials Program evaluation Teacher training Ministry of education staff	Evaluation of student achievement Evaluation of school system Teacher evaluation Research
School enrolment <ul style="list-style-type: none"> • admission • attendance 				
Supervision				
School transportation <ul style="list-style-type: none"> • contracts • transfers 				
Cafeteria				
Loans and scholarships				
Residences				

CHAPTER V

IMPLEMENTATION OF RIGHTS CONFERRED BY SECTION 23 OF THE CHARTER

- I. In your opinion, what are the remaining obstacles to implementing in your province or territory the rights conferred by section 23 of the Charter?
- II. Is an implementation plan for section 23 underway in your province or territory?
- III. Make a list of gains and areas for improvement using recommendations in this chapter.

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CHAPITRE V

LA CONCRÉTISATION DES DROITS CONFÉRÉS PAR L'ARTICLE 23 DE LA CHARTE

1. Quels sont, à votre avis, les obstacles à la concrétisation des droits conférés par l'article de la *Charte* dans votre province ou territoire ?
2. La mise en œuvre de mesures permettant d'assurer le respect des droits conférés par l'article 23 a-t-elle été amorcée dans votre province ou territoire ?
3. Faites un bilan des acquis et des lacunes en vous fondant sur la recommandation n° 1 de ce chapitre.

5. Service de la vie étudiante	6. Service des relations-école-milieu	7. Service aux activités complémentaires	8. Service de la programmation	9. Service de l'évaluation et de la recherche
Consultation et animation <ul style="list-style-type: none"> • orientation • psychologie • information scolaire • service de santé • pastorale • activités étudiantes 	Comité de parents Comité d'école École communautaire Comité conjoint scolaire municipal	Bibliothèque Audiovisuel Ordinateurs et informatique	Élaboration de programmes Évaluation de l'école Évaluation du matériel didactique Évaluation des programmes Formation pédagogique Personnel du ministère	Évaluation du rendement des étudiants Évaluation du système scolaire Évaluation des enseignants Recherche
Fréquentation scolaire <ul style="list-style-type: none"> • admission • présences 				
Surveillance Transport scolaire <ul style="list-style-type: none"> • contrais • transferts 				
Cafétéria Prêts et bourses Résidences				

Tableau Appendice D

Composantes d'une gestion scolaire complète – « À vous de décider »

1. Service de l'enseignement	2. Service des finances et administration générale	3. Service du personnel	4. Service de l'équipement
Enseignement préscolaire <ul style="list-style-type: none"> • langage, mathématique, musical, social, artistique, scientifique, physique, religieux 	Administration du service Budget Contrôle interne Contrôle externe	Administration du service Organisation du travail Recrutement et sélection	Administration du service Approvisionnement Carionnage Entretien et réparation
Enseignement élémentaire <ul style="list-style-type: none"> • régulier • enfance inadaptée/douée 	Paye Perception des revenus Conseils des commissaires et de direction [élection et(ou) nomination]	Affectation et rémunération Évaluation Accréditation (provinciale)	Entretien et réparation – bâtiments, terrains Entretien ménager Consommation énergétique – chauffage, électricité
Enseignement secondaire <ul style="list-style-type: none"> • régulier – matières des programmes 	Direction générale Secrétariat général Service de la dette Orientation des projets éducatifs	Perfectionnement professionnel Développement organisationnel	Location/construction d'immeubles Protection et sécurité – assurance, surveillance Transfert scolaire et municipal – échanges de services Communication électronique – téléphone, interphone
<ul style="list-style-type: none"> • professionnel – ateliers – tronc commun • adolescence inadaptée/douée • groupes d'étudiants spéciaux 	Politiques Informatique		
Classes d'accueil			
Éducation permanente			

2. Quels sont les avantages et les inconvénients de ce modèle ?
3. Quels autres modèles connaissez-vous ? Quels en sont les avantages et les inconvénients ?
4. Quels sont les besoins principaux des minorités de langue officielle en matière de gestion scolaire ?
5. Selon vous, quelles composantes de la gestion scolaire pourraient être gérées sur le plan local ? Sur le plan régional ? Sur le plan provincial ?
6. En utilisant la grille « À vous de décider » et selon les principes énoncés, placez les paliers décisionnels qui correspondraient à votre opinion.

C. DE L'INSTRUCTION À LA GESTION SCOLAIRE EN MILIEU MINORITAIRE

2. À votre avis, l'autonomie locale est-elle souhaitable ? Dans quelle mesure ?
3. Quels sont les avantages d'un palier de décision régional ? Vous semble-t-il approprié à votre milieu ? Selon vous, combien de groupes régionaux seraient requis pour la minorité dans votre province ou territoire ?
4. Comment le ministère de l'Éducation de votre province répond-il aux besoins de la minorité officielle ? Quels services vous offre-t-il ?
5. Quelles sont les ressources dont dispose actuellement la minorité officielle ?
6. Des services présentés au tableau III-2, lesquelles connaissez-vous par expérience ?
7. Quels services vous semblent les plus importants pour les minorités ?

1. Le principe de l'homogénéité est-il important pour la minorité officielle de votre province ? Pourquoi ?
2. Le principe du regroupement des services est-il important ? Pourquoi ?
3. Le financement pose-t-il un problème dans l'unité scolaire que vous connaissez ?
4. Quelles composantes de la gestion scolaire vous paraissent essentielles ? Lesquelles peuvent être implantées ? Quelles en seraient les étapes ?
5. Lesquelles peuvent être partagées ?

CHAPITRE IV LES MODÈLES ORGANISATIONNELS ACTUELS ET PROPOSÉS

1. D'après la typologie des modèles proposés, quel modèle est en vigueur dans votre région pour la minorité de langue officielle ? Consultatif ? Contractuel ? Représentatif ? Parallèle à la structure majoritaire ?

CHAPITRE III

DE L'INSTRUCTION À LA GESTION SCOLAIRE EN MILIEU MINORITAIRE

A. LA PROBLÉMATIQUE DE L'INSTRUCTION ET DE LA GESTION SCOLAIRE

3. Selon vous, quelles sont les causes de l'écart entre les effectifs dans les écoles homogènes de la minorité et la clientèle admissible en vertu de l'alinéa (1)a) de la *Charte* ?
4. Les parents de la minorité se prévalent-ils suffisamment des services offerts dans la langue de la minorité ?
5. Les services offerts dans votre localité sont-ils suffisants pour répondre aux besoins de la minorité ?
6. Quels critères d'admission à l'école homogène devraient être établis ?
7. Quelles démarches peuvent être entreprises pour obtenir de meilleurs services éducatifs pour la minorité de langue officielle ?

1. Quelles sont les raisons qui poussent les minorités à revendiquer leurs droits à l'instruction dans la langue de la minorité et à la gestion scolaire ?
2. Que signifie « gestion » pour vous ?
3. Donnez des exemples de décisions devant être prises par la minorité officielle dans l'exercice de la gestion scolaire.
4. Pourquoi la gestion est-elle importante ?
5. Quels obstacles empêchent la gestion par la minorité officielle ? Comment les contrer ?

B. LES COMPOSANTES DE LA GESTION SCOLAIRE CONTEMPORAINE

1. Existe-t-il un comité de parents à l'école de votre communauté ? Y avez-vous déjà participé ? Quel rôle joue-t-il ? Quel rôle pourrait-il jouer ?

APPENDICE E

QUESTIONS À DISCUTER

Après la lecture de ce document, les questions qui suivent peuvent servir à préciser les connaissances acquises. Elles peuvent également servir de pistes pour lancer des discussions en groupe.

CHAPITRE PREMIER

RÉSUMÉ DE LA JURISPRUDENCE DE L'ARTICLE 23 DE LA CHARTE

1. Selon les critères d'admissibilité énoncés à l'article 23, qui sont les bénéficiaires ?

2. L'instruction disponible à la minorité officielle dans votre province répond-elle aux critères énoncés à l'article 23 ?

3. Le nombre est-il suffisant dans votre collectivité pour justifier un ou des établissement(s) autonome(s) ?

4. Comment les membres de votre collectivité ont-ils alerté le gouvernement provincial quant aux besoins de la minorité officielle ?

5. Quels moyens de contrôle et de gestion ont été proposés au gouvernement provincial ?

6. Quelles sont les mesures à prendre pour satisfaire aux besoins de la minorité ?

CHAPITRE II

L'ÉTAT DE L'ÉDUCATION DE CHAQUE DES MINORITÉS DE LANGUE OFFICIELLE AU CANADA

1. Quelles sont les dispositions légales relatives à l'instruction dans la langue de la minorité ont été prises dans votre province ou territoire ?

2. Selon vous, quelles sont les causes de l'écart entre les effectifs dans les programmes de la minorité et la clientèle admissible en vertu de l'alinéa (1)a) de la Charte ?

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APPENDICE D
LISTE DES MODÈLES PAR ORDRE CHRONOLOGIQUE

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Marchand c. Simcoe County Board of Education, 1986, 55 O.R. 2d. 638.

Marchand c. Simcoe County Board of Education, 1987, 44 D.L.R. 4d 171.

Mahe et al. c. la reine (Alberta), 1987, C.A. Alberta.

Whitlington c. Board of School Trustees of School District no. 63 (Saanich), 1987.

Laurent Lavoie et al. c. P. G. Nouvelle-Ecosse et Cape Breton District School Board, 1988, (84, N.S.R. (2^e) 387), 10 février.

Laurent Lavoie et al. c. P. G. Nouvelle-Ecosse et Cape Breton District School Board, 1988, (84, N.S.R. (2^e) 387), 11 mars.

Laurent Lavoie et al. c. P. G. Nouvelle-Ecosse et Cape Breton District School Board, 1988, (84, N.S.R. (2^e) 387), 29 août.

Commission des écoles fransaskoises et al. c. P. G. Saskatchewan, 1988.

notre évaluation des modèles de gestion (en vigueur ou proposés) nous amène à une conclusion qui diffère de celle du juge Dickson : les modèles ne constituent pas des moyens uniformément efficaces pour réaliser les objectifs de l'article 23. En effet, les modèles proportionnels et représentatifs appliqués au Canada n'atteignent pas, comme le montrent l'expérience et les principes énoncés, un seuil suffisant pour assurer le maintien et l'épanouissement des minorités de langue officielle. En revanche, les modèles parallèles à la structure majoritaire sont à ce chapitre des mesures efficaces. Une mise en œuvre souple d'un modèle parallèle à la structure majoritaire adapté aux petits nombres permettrait de mieux concrétiser les droits confirmés par la Cour suprême.

L'application de l'article 23, par suite de l'arrêt de la Cour suprême, continuera d'évoluer, comme le veut l'histoire. Nous espérons que ce document contribuera à cette évolution, au moins dans une certaine mesure, en apportant des données concrètes favorisant une mise en œuvre plus complète des objectifs de cet article et le respect des droits qui y sont stipulés.

sur l'objectif primordial de l'article 23, le juge Dickson déclare : « Cette gestion et ce contrôle sont vitaux pour assurer l'épanouissement de [la] langue et de [la] culture [des minorités] » (p. 24). Ainsi, il est essentiel que la minorité linguistique ait le contrôle des aspects de l'éducation qui touchent sa langue et sa culture. Au minimum, les représentants de la minorité doivent détenir un pouvoir décisionnel absolu dans les cinq domaines suivants :

- les dépenses prévues pour cette instruction et ces établissements;
- la nomination et la direction des personnes chargées de l'administration de cette instruction et de ces établissements;
- l'élaboration de programmes scolaires;
- le recrutement et l'affectation du personnel, notamment des professeurs;
- la conclusion d'accords pour l'enseignement et les services dispensés aux élèves de la minorité linguistique.

Or, divers moyens peuvent être utilisés pour accorder à la minorité un droit exclusif à la gestion scolaire. Lorsque le nombre le justifie, une commission scolaire indépendante est nécessaire. Toutefois, dans le cas d'Edmonton, origine du litige, le nombre d'au moins 242 élèves, selon la demande de services en 1984 et le nombre qui, selon les calculs de la cour, fréquenterait vraisemblablement cette école (p. 41), exige au minimum une représentation proportionnelle de la minorité à la commission scolaire de la majorité.

Voyons maintenant les répercussions de cet arrêt sur l'ensemble de cette étude. Signalons, en premier lieu, que les principes et les objectifs énoncés par la cour confirment ceux qui ont servi de point de départ à notre étude sur les services d'instruction et de gestion scolaire.

En ce qui concerne le nombre suffisant, nous faisons état, au Chapitre II, de statistiques décrivant le nombre réel d'enfants inscrits aux programmes d'instruction de chaque province et territoire. Étant donné le caractère réparateur de l'article 23, nous présentons aussi une compilation conservatrice du nombre d'ayants droit, c'est-à-dire du nombre d'élèves admissibles en vertu de cet article. La Cour suprême du Canada établit pour sa part que le nombre pertinent, soit le nombre d'élèves qui *en définitive* se prévaudront de l'instruction offerte, se situe entre la *demande* relative au service et le nombre d'*ayants droit*. La cour favorise ainsi le calcul d'un « terme moyen » (p. 36). Pour faciliter la planification de l'offre de services à la minorité à partir de l'estimation de ce terme moyen, nous présentons, d'une part, un nombre conservateur d'ayants droit, selon la méthodologie que nous avons employée et, d'autre part, un nombre d'inscriptions conservateur par rapport à la demande.

Notre analyse des modèles de gestion scolaire pour les minorités de langue officielle (chapitres III et IV) repose également sur les principes confirmés par la Cour suprême. De plus, il advient que les champs décisionnels exclusivement réservés à la minorité choisis par la Cour suprême sont exactement ceux qu'avait retenus le juge Purvis de la cour du banc de la reine de l'Alberta. Or, nous avions notamment fondé notre analyse sur ces mêmes champs décisionnels. Le Chapitre IV s'en trouve donc doublement légitimé. Toutefois,

— l'article 23 comprend la notion d'égalité entre les deux groupes de langue officielle. Dans l'interprétation des droits, il n'est donc pas utile d'invoquer l'article 15 de la *Charte* (p. 21).

Quant à l'application par les provinces de l'article 23, la cour en établit trois principes directeurs :

- la qualité de l'éducation donnée à la minorité doit, en principe, être égale, mais non nécessairement identique, à celle de la majorité; (p. 30)
- des fonds publics adéquats sont garantis; (p. 47)
- les gouvernements peuvent accorder davantage que le minimum requis par l'article 23. (p. 18).

Outre ces trois principes, la cour s'est longuement penchée sur la question du « nombre suffisant » dans l'application des droits conférés. Tout d'abord, elle donne une nouvelle définition du critère du « nombre variable » qui, désormais, « garantit le type et le niveau de droits et de services qui sont appropriés pour assurer l'instruction dans la langue de la minorité au nombre d'élèves en question » (p. 18). Pour déterminer les droits et les services requis dans chaque situation particulière, il faut se référer aux principes et aux objectifs ci-avant énumérés. De plus, la cour ajoute des considérations d'ordre pratique : les coûts, l'offre raisonnable de services et la convenance pédagogique de ces services. Toutefois, « le caractère réparateur de l'article 23 laisse à entendre que les considérations pédagogiques pèseront plus lourd que les exigences financières quand il s'agit de déterminer si le nombre d'élèves justifie la prestation des services concernés ».

La cour apporte deux autres précisions en ce qui concerne le « nombre suffisant ». Le calcul du nombre suffisant n'est pas limité par les frontières des districts scolaires actuels (p. 38); il peut, à la rigueur, s'étendre à la province entière. Ainsi, lorsque le nombre est minimal, « il pourra être nécessaire d'assurer le transport des élèves ou peut-être prévoir des pensionnats, pour répondre aux exigences de l'article 23 » (p. 38). De plus, la cour a précisé que le chiffre pertinent est celui du nombre de personnes qui se prévaudront, en définitive, des services offerts. Ce nombre peut être estimé à partir de deux paramètres : la demande connue relative au service et le nombre d'ayants droit (p. 37).

Quant aux droits spécifiques conférés, la cour a considéré que l'article 23 accorde un droit général (p. 4) à l'instruction dans la langue de la minorité. L'alinéa 23(3)a), pour sa part, porte sur l'instruction et les programmes, là où le nombre le justifie et accorde ainsi, puisque « l'instruction doit avoir lieu quelque part, le droit implicite d'être instruit dans des établissements » (p. 22).

Par sa structure même, l'article 23 sous-entend que l'alinéa 23(3)b) comprend une gamme de droits supérieurs au droit général à l'instruction stipulé par l'alinéa 23(3)a), soit le contrôle et la gestion des programmes d'instruction là où le nombre le justifie. En effet, en se fondant

APPENDICE B

L'ARRÊT DE LA COUR SUPRÊME DU 15 MARS 1990 ET SES INCIDENCES SUR CETTE ÉTUDE

L'arrêt de la Cour suprême du Canada dans l'importante affaire *Mahe et al. c. S.M. la reine du chef de l'Alberta* a été rendu le 15 mars 1990, au moment de mettre sous presse la présente étude. Dans l'ensemble, notre analyse est confirmée par les interprétations et les principes énoncés dans l'arrêt de la Cour suprême. Nous étions ici le Chapitre premier en donnant une description de cet arrêt et exposons ensuite les points qui confirment l'analyse des chapitres subséquents de ce rapport.

Dans son arrêt unanime, la Cour suprême du Canada confirme les objectifs de l'article 23 de la *Charte canadienne des droits et libertés* et demeure fidèle aux origines historiques de cet article. En effet, le juge en chef Dickson édicte :

À mon avis, les appelants ont parfaitement raison d'affirmer que « l'histoire révèle que l'article 23 était destiné à remédier, à l'échelle nationale, à l'érosion progressive des minorités parlant l'une ou l'autre langue officielle et à appliquer la notion de "partenaires égaux" des deux groupes linguistiques officiels dans le domaine de l'éducation. » (p. 16) [traduction]

Cette citation présente les trois objectifs de l'article 23 reconnus par la cour. Tout d'abord, l'article 23 a trait au maintien et à l'épanouissement de la langue et de la culture des minorités de langue officielle du Canada. Il vise également à appliquer, à l'égard de l'éducation, la notion de « partenaires égaux » des deux groupes linguistiques officiels. Enfin, l'article 23 a une portée réparatrice : il requiert que soient mis en œuvre, d'un océan à l'autre, des moyens pour remédier à l'érosion progressive subie par les minorités de langue officielle. Cet article, conclut la cour, apporte de nouvelles garanties qui soulignent, comme le notait le juge Kerans de l'Alberta, l'insuffisance du système d'enseignement actuel.

Voici les quatre principes généraux régissant l'interprétation de l'article 23 :

- langue et culture sont indissociables : l'épanouissement des minorités de langue officielle ainsi que l'article 23 reposent donc sur ces deux éléments; (p. 15)
- l'instruction scolaire dans la langue maternelle et l'école de la minorité jouent un rôle primordial dans le maintien et l'épanouissement des minorités de langue officielle; (p. 15)
- c'est avec prudence que les tribunaux doivent interpréter l'article 23 tout en lui inspirant la force qui sera nécessaire à la réussite des objectifs visés; (p. 17-18)

APPENDICE A

« DROITS À L'INSTRUCTION DANS LA LANGUE DE
LA MINORITÉ »

Article 23 de la *Charte canadienne des droits et libertés*

23. (1) Les citoyens canadiens :

- a) dont la première langue apprise et encore comprise est celle de la minorité francophone ou anglophone de la province où ils résident, qui ont reçu leur instruction, au niveau primaire, en français ou en anglais au Canada et qui résident dans une province où la langue dans laquelle ils ont reçu cette instruction est celle de la minorité francophone ou anglophone de la province, ont, dans l'un et l'autre cas, le droit d'y faire instruire leurs enfants, aux niveaux primaire et secondaire, dans cette langue.

(2) Les citoyens canadiens dont un enfant a reçu ou reçoit son instruction, au niveau primaire ou secondaire, en français ou en anglais au Canada ont le droit de faire instruire tous leurs enfants, aux niveaux primaire et secondaire, dans la langue de cette instruction.

- (3) Le droit reconnu aux citoyens canadiens par les paragraphes (1) et (2) de faire instruire leurs enfants, aux niveaux primaire et secondaire, dans la langue de la minorité francophone ou anglophone d'une province :
 - a) s'exerce partout dans la province où le nombre des enfants des citoyens qui ont ce droit est suffisant pour justifier à leur endroit la prestation, [à même] les fonds publics, de l'instruction dans la langue de la minorité;
 - b) comprend, lorsque le nombre de ces enfants le justifie, le droit de les faire instruire dans des établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics.

APPENDICES

Notes

Chapitre V

1. Voir à ce sujet le Chapitre II.
2. Le Chapitre II en fait état de manière détaillée.
3. Le Chapitre II fait état des données sur lesquelles se fondent les pourcentages obtenus. Voir en particulier les tableaux II-5 et II-6. Rappelons que ces pourcentages présentent un aperçu optimiste de la situation dans la mesure où, dans la pratique, les effectifs scolaires sont constitués non seulement des ayants droit mais encore d'autres enfants admis aux programmes d'enseignement de la minorité.
4. Les services offerts à la minorité apparaissent ainsi plus complets qu'ils ne le sont en réalité puisque, ayant exclu des effectifs tous les enfants qui ne sont pas de langue maternelle de la minorité pour la variable « c » ou encore non admissibles en vertu de l'article 23(1)a) pour la variable « e », ces effectifs auraient été inférieurs.
5. En effet, comme nous l'avons déjà expliqué, nous aurions pu retenir toutes les déclarations de langues maternelles minoritaires, qu'elles soient uniques, doubles ou triples. Par ailleurs, le choix le plus limitatif (ne retenir que les déclarations de langue maternelle unique) contrevenirait probablement à l'esprit et à la lettre de l'article 23.
6. Voir, au Chapitre II, la section sur chaque province et territoire pour plus de détails.
7. Inclut, pour le tableau II-3, les effectifs des commissions scolaires et de la Défense nationale.
8. Voir la section sur le Québec au Chapitre II.
9. Tableau n° PO 3272, 17 novembre 1988. Ces données ont été analysées par M. Michel Paillet.

Recommandation n° 5

Il est recommandé que des *dossiers d'information* soient préparés afin de mieux renseigner les membres des minorités sur l'importance de se prévaloir d'une éducation dans leur langue.

Recommandation n° 6

Il est recommandé que les associations minoritaires organisent une campagne d'information destinée aux membres de la majorité afin de les informer des motifs qui sous-tendent les revendications des minorités de langue officielle.

- des programmes d'instruction alternatifs aux écoles homogènes, là où ces dernières ne peuvent être établies;
- un modèle de gestion des écoles homogènes parallèle à la structure scolaire majoritaire avec paliers décisionnels distincts sur les plans local, régional et provincial;
- un modèle de gestion efficace pour les programmes d'instruction alternatifs aux écoles homogènes, modèle qui soit une variante des structures parallèles à la structure scolaire majoritaire;
- une estimation des coûts nécessaires pour assurer, conformément au plan de concrétisation, l'instruction et la gestion des services éducatifs aux minorités de langue officielle;
- une structure décisionnelle au sein du ministère de l'Éducation chargée exclusivement de gérer les services éducatifs de la minorité de langue officielle;
- un projet d'amendement de la législation en matière d'éducation en vue d'assurer la reconnaissance légale des droits conférés aux minorités de langue officielle en vertu de l'article 23 de la Charte.

Recommandation n° 2

Il est recommandé que des ententes bilatérales soient signées entre le gouvernement fédéral et chaque gouvernement provincial et territorial afin de mener à terme l'élaboration du plan de concrétisation de l'article 23.

Recommandation n° 3

Il est recommandé que des recherches ultérieures soient effectuées afin d'étayer les raisons motivant les écarts constatés entre la clientèle admissible en vertu de l'alinéa 23(1)a) et les effectifs réels dans les programmes dispensant l'instruction à la minorité, en particulier dans les écoles homogènes. Ces recherches devront en outre expliquer les variations importantes observées à cet égard entre les provinces et les territoires. Elles permettront ultimement de fixer des objectifs concrets et réalisables en vue de desservir la clientèle admissible en vertu de l'article 23.

Recommandation n° 4

Étant donné l'importance qu'il a joué dans l'acquisition d'une jurisprudence dans le domaine des droits des minorités, il est recommandé que le *Programme de contestations judiciaires* demeure en vigueur jusqu'à ce qu'un plan adéquat de concrétisation des droits ait été élaboré en consultation avec les parties intéressées et largement mis en œuvre dans chaque province et territoire. Il est également recommandé que le mandat de ce programme soit élargi afin qu'il puisse fournir aux minorités de langue officielle et aux gouvernements une documentation juridique et des services au consultation pertinents, en particulier aux groupes et individus dont les droits ne sont pas encore reconnus.

Le premier moyen est le *dialogue*. Ce dialogue a longtemps été difficile parce que les minorités se trouvaient, à toutes fins pratiques, démunies devant les gouvernements. En 1982 les droits éducatifs des minorités de langue officielle dans la constitution du pays, la *Charte canadienne des droits et libertés* a considérablement transformé le cours des choses à cet égard. Avec la *Charte*, les minorités possèdent désormais un instrument judiciaire fondamental, capable de modifier leurs rapports avec les gouvernements et leur permettant d'obtenir éventuellement un traitement équitable, égal à celui de la majorité.

Le second moyen est le *recours aux tribunaux*. Ce recours doit être compris comme une démarche légitime, destinée notamment à clarifier l'interprétation du texte de la loi. Il peut donc être souhaitable pour toutes les parties en cause. Au Chapitre premier, nous avons constaté l'acquis judiciaire important fourni par les tribunaux en ce qui concerne l'interprétation des droits des minorités.

Le dialogue et le recours aux tribunaux sont des moyens complémentaires, dans la mesure où l'un ne saurait être véritablement efficace sans l'autre. D'une part, comme nous l'avons évoqué, le dialogue devient fructueux, les minorités ayant ultimement la possibilité de recourir aux tribunaux. D'autre part, le recours aux tribunaux risque d'être moins efficace s'il ne s'inscrit pas dans un processus de dialogue. La reconnaissance juridique des droits doit donner lieu à des politiques et à des projets concrets, ce qui suppose la concertation éclairée et la participation active et dynamique de tous les partenaires en cause.

III. RECOMMANDATIONS

Au terme de cette recherche, nous formulons quelques recommandations susceptibles de guider la concrétisation des droits conférés par l'article 23 de la *Charte canadienne des droits et libertés*. Ces recommandations tiennent compte des éléments essentiels résumés dans ce chapitre, notamment : les grands objectifs de l'article 23, les revendications des minorités, les acquis obtenus dans la concrétisation des droits scolaires des minorités, les obstacles à la concrétisation des droits ainsi que le processus préconisé pour leur concrétisation.

Recommandation n° 1

Il est recommandé que, dans chaque province et territoire, un *plan de concrétisation de l'article 23* de la *Charte* soit établi entre 1989 et 1992. Ce plan doit prévoir :

- la détermination précise, à l'échelle régionale, de la *clientèle admissible* en vertu de l'article 23, clientèle que nous avons dénombrée dans cette étude pour chaque province et territoire;
- une *carte scolaire* précisant clairement les regroupements de la population minoritaire;
- une énumération des localités, des villes et des régions où des *écoles homogènes* doivent être réservées aux membres de la minorité de langue officielle;

Tableau V-5

Projection de la clientèle admissible*, 1992

1986**
1992***
Différence
1986-1992
(en %)

Colombie-Britannique	14 815	13 767	(-7,1)
Alberta	21 093	22 628	7,3
Saskatchewan	10 722	10 319	(-3,8)
Manitoba	17 754	16 743	(-5,7)
Ontario	135 612	129 861	(-4,2)
Québec****	121 513	125 127	2,8
Nouveau-Brunswick	57 331	54 089	(-5,7)
Ile-du-Prince-Édouard	2 280	1 838	(-19,4)
Nouvelle-Écosse	10 516	9 546	(-9,2)
Terre-Neuve	1 117	1 106	(-0,1)
Yukon	215	258	20,0
Territoires du Nord-Ouest	459	519	13,1
Total : Minorité de langue française	271 914	260 673	(-4,1)
Total : Minorité de langue anglaise	121 513	125 127	3,0

Source :

Statistique Canada, 1986, compilation spéciale, Tableau n° PO3272, 17 novembre 1988. Analyse de M. Paille (1990).
* Nombre d'enfants de 6 à 17 ans dont un parent (citoyen canadien) est de langue maternelle de la minorité : inclut langue maternelle unique (française ou anglaise) et double (française et anglaise).
** Compilation en cours d'après les données du recensement de 1986. Nombre d'enfants admissibles âgés de 1 à 11 ans en 1986. Ces enfants auront de 6 à 17 ans en 1992. Cette projection ne tient pas compte de la mobilité interprovinciale, de l'immigration ni de la mortalité.
*** L'alinéa 23(1)a) ne s'applique pas actuellement au Québec.

Ces données font voir l'urgence, particulièrement chez les communautés francophones du Canada, de concrétiser les droits scolaires conférés aux minorités de langue officielle l'article 23.

B. PROCESSUS PRÉCONISÉ POUR LA CONCRÉTISATION DES DROITS CONFÉRÉS PAR L'ARTICLE 23

Deux moyens complémentaires peuvent permettre aux principaux intervenants dans ce dossier, en l'occurrence les gouvernements et les minorités, de parvenir à concrétiser ces droits.

II. VERS L'AVENIR

Afin d'évaluer les besoins éducatifs futurs des minorités de langue officielle et de leur offrir les services nécessaires à la concrétisation des droits qui leur sont conférés en vertu de l'article 23, nous établissons ici, pour 1992, une projection de la clientèle qui serait admissible en vertu de la *Charte*. Nous proposons ensuite un processus destiné à favoriser la pleine réalisation des droits éducatifs de cette clientèle.

A. APERÇU DU NOMBRE D'ENFANTS ADMISSIBLES À L'INSTRUCTION EN 1992

Le tableau V-5 permet d'étayer, par province et par territoire, la projection de la clientèle que nous avons établie pour 1992. Notre projection, fondée sur la compilation spéciale de Statistique-Canada², suppose que cette clientèle comprend les enfants âgés de 0 à 11 ans au moment du recensement de 1986. Ces enfants atteindront en effet l'âge scolaire en 1992, soit de 6 à 17 ans, et formeront par conséquent la clientèle admissible en vertu de l'alinéa 23(1)a). Ce calcul suppose évidemment que le nombre de ces enfants n'aura pas changé entre 1986 et 1992. Il omet par conséquent les nouveaux arrivants et les mortalités ainsi que les migrations interprovinciales et considère que le nombre de ces enfants demeure inchangé dans chaque province et territoire.

Comme nous le constatons au tableau V-5 :

- la clientèle admissible à l'instruction en français devrait diminuer de 4,1 p. 100 dans l'ensemble du Canada anglais entre 1986 et 1991, alors que la clientèle, qui serait admissible à l'instruction en anglais au Québec si l'alinéa 23(1)a) s'y appliquait, devrait augmenter de 3 p. 100;
- la diminution de la clientèle admissible à l'instruction en français au Canada anglais se manifestera dans la majorité des provinces. C'est à l'Île-du-Prince-Édouard qu'elle sera proportionnellement la plus importante, atteignant 19,4 p. 100;
- si on faisait abstraction des territoires, seule l'Alberta connaîtrait une hausse de la clientèle admissible à l'instruction en français, de l'ordre de 7,3 p. 100.

La diminution de la clientèle scolaire admissible chez les minorités francophones prend des proportions d'autant plus grandes quand on sait que l'ensemble de la population canadienne d'âge scolaire (de 6 à 17 ans) augmente de 3,2 p. 100 durant la même période (Pailhé, 1990).

Pour ce qui est de la participation des francophones à la gestion scolaire, seul le Yukon s'apprête, par le truchement d'une nouvelle loi sur l'éducation, à mettre en place les mécanismes requis.

B. OBSTACLES À FRANCHIR POUR CONCRÉTISER LES DROITS CONFÉRÉS PAR L'ARTICLE 23

Deux obstacles principaux s'opposent à la concrétisation des droits conférés par l'article 23 :

Le premier obstacle réside dans l'insuffisance d'information diffusée sur les besoins, les aspirations et les droits des minorités de langue officielle en matière d'éducation. Cette insuffisance se manifeste aussi bien chez les membres de la majorité (grand public, gouvernements, médias) qu'au sein même de la minorité de langue officielle. Si plusieurs membres de la minorité font preuve d'un militantisme vigoureux et d'une conscience très vive pour tous les aspects touchant l'éducation dans leur langue, d'autres membres méconnaissent par contre leurs droits et sous-estiment l'importance de s'affirmer culturellement, de prendre en mains leur éducation et de faire instruire leurs enfants dans la langue de la minorité. Quant aux membres de la majorité, une diffusion plus efficace d'information permettrait une meilleure sensibilisation à la situation des minorités et inciterait à plus de compréhension et de tolérance.

Alfin de surmonter ce premier obstacle, il conviendrait d'élaborer un plan efficace de diffusion d'information, visant aussi bien les membres de la majorité que ceux de la minorité. Ce plan devrait être conçu avec l'aide de spécialistes en communication.

Le deuxième obstacle à la concrétisation de l'article 23 tient à la difficulté d'unité d'action entre les gouvernements fédéral et provinciaux dans ce dossier. En raison de la spécificité même de la fédération canadienne, qui consacre deux niveaux de pouvoir (fédéral et provincial), la coordination et l'unité d'action sont souvent difficiles à établir, surtout en matière d'éducation, domaine réservé constitutionnellement aux provinces. Chacun tend dès lors à agir de façon isolée, en fonction des contingences conjoncturelles ou locales, obliérant ainsi la dimension nationale que recouvre historiquement la situation des minorités de langue officielle au Canada.

Alfin de contrer cette tendance à la démultiplication des politiques et à la dispersion des actions, il devient nécessaire, pour mener à bien la concrétisation des droits des minorités dans toutes les régions du Canada, de prévoir ou de renforcer les mécanismes de coordination intergouvernementale. Cette approche s'impose sur deux plans : 1) entre l'ensemble des gouvernements provinciaux, notamment par l'intermédiaire du Conseil des ministres de l'Éducation; 2) entre le gouvernement fédéral et chaque gouvernement provincial, au moyen d'ententes permettant de faire avancer le dossier tout en évitant les conflits au chapitre des compétences (par exemple, l'entente intervenue récemment entre le gouvernement fédéral et celui de la Saskatchewan).

- les parents de Saint-Jean ont demandé aux tribunaux de reconnaître dans la loi les droits à l'instruction de la minorité francophone;
- un poste spécial de conseiller pédagogique a été créé au ministère de l'Éducation, en vue de procéder à la consultation de la communauté francophone puis à l'élaboration des programmes de français;
- un centre scolaire communautaire de langue française a ouvert ses portes à Grand-Terre en septembre 1988;
- une école d'immersion a été transformée en école mixte à Cap Saint-George;
- les effectifs dans les programmes d'enseignement de la minorité ont augmenté dans l'ensemble de 238 p. 100 de 1986 à 1989 (162 élèves).

Toutefois, en 1986, seulement l'équivalent de 5,1 p. 100 de la clientèle admissible telle que nous l'avons calculée en vertu de l'alinéa 23(1)a), soit 68 enfants sur 1 117, bénéficie de l'enseignement en français.

Aucun modèle de gestion scolaire prévoyant la participation active de la communauté francophone n'a par ailleurs été élaboré, à l'exception des comités consultatifs de parents francophones œuvrant auprès de certaines commissions scolaires anglophones.

Trois aspects devront donc être améliorés au cours des prochaines années dans cette région du pays eu égard aux droits scolaires de la minorité francophone : la reconnaissance de ces droits dans la *Loi sur l'éducation*, l'accès à une instruction de qualité dans des écoles homogènes et, finalement, la mise en vigueur d'un modèle efficace de gestion scolaire prévoyant la participation active des francophones.

Dans les *Territoires du Nord-Ouest* et au *Yukon*, voici les principaux progrès réalisés depuis 1982 :

- une directive du ministère de l'Éducation du Yukon stipule que l'instruction en français sera désormais fournie là où le nombre le justifie;
- une école homogène est sur le point de s'ouvrir au Yukon : l'école Émile-Tremblay de Whitehorse;
- alors qu'aucun programme d'instruction en français n'existait en 1986 dans les Territoires du Nord-Ouest, 43 élèves ont accès en 1989 à un tel programme.

Dans les Territoires du Nord-Ouest, cependant, aucun enfant parmi les 459 admissibles en vertu de l'alinéa 23(1)a) ne recevait en 1986 l'instruction dans la langue de la minorité. Au Yukon, seulement l'équivalent de 16,7 p. 100 de la clientèle admissible, soit 36 enfants sur 215, bénéficiait en 1986 d'une éducation en français. D'énormes progrès restent donc à accomplir dans cette région du pays quant à l'accessibilité à l'éducation dans la langue de la minorité francophone.

— un amendement à la loi scolaire a confirmé, en 1988, le droit de la minorité francophone à l'instruction en français ainsi que son droit de participer à l'élaboration et à l'implantation de cette instruction;

— un amendement aux règlements scolaires instaure une commission scolaire provinciale en 1990. La commission scolaire de l'unité n° 5 (région Evangéline) est désormais responsable de l'instruction en française pour toute la province;

— les effectifs dans les deux écoles dispensant l'instruction à la minorité ont augmenté de 2 p. 100 (10 élèves) de 1986 à 1989.

En dépit de ces acquis, l'équivalent de 21,8 p. 100 de la clientèle admissible en vertu de l'alinéa 23(1)a), soit 497 enfants sur 2 280, bénéficie en 1986 de l'instruction dans la langue de la minorité. Par conséquent, les progrès qu'il faudra réaliser au cours des prochaines années devront porter sur l'accessibilité à l'instruction en français.

En *Nouvelle-Ecosse*, les progrès suivants ont été accomplis depuis 1982 :

— en 1983, le ministre de l'Education a confié formellement à l'école acadienne la tâche de contribuer au maintien de la langue et de la culture acadiennes et d'aider les Acadiens à jouir pleinement de leurs droits en matière linguistique;

— des parents de Sydney ont obtenu gain de cause devant la cour d'appel de la province, qui a jugé le nombre des enfants suffisant pour l'obtention de services éducatifs en français (ce nombre a toutefois été jugé insuffisant pour l'obtention d'une école homogène);

— dix-neuf écoles ont été désignées écoles acadiennes par le gouverneur en conseil sur recommandation du ministre de l'Education;

— les effectifs dans les écoles acadiennes homogènes ont augmenté de 1,6 p. 100 (31 élèves) de 1986 à 1989.

En dépit de ces acquis, l'équivalent de 34,8 p. 100 de la clientèle admissible en vertu de l'alinéa 23(1)a), soit 3 655 enfants sur 10 516, bénéficie en 1986 d'un enseignement dans la langue de la minorité. Aucune école homogène secondaire n'est par ailleurs disponible pour répondre à cette clientèle. Un progrès important reste donc à accomplir eu égard à l'accessibilité des services.

En ce qui a trait à la participation de la minorité francophone à la gestion de ses services éducatifs, aucun modèle de gestion scolaire n'a encore été élaboré à cet effet. Néanmoins, on note que la commission scolaire de Clare-Argyle est francophone dans les faits.

À *Terre-Neuve*, des progrès se font sentir peu à peu depuis 1982 :

— le *Report of the Policy Advisory Committee on French Programs* a reconnu le droit de la minorité francophone à l'instruction en français au sein d'établissements homogènes;

Au *Nouveau-Brunswick*, province qui s'est donné formellement un statut bilingue, renforcé depuis l'avènement de la *Charte* en 1982, la communauté acadienne a consolidé ses acquis dans le domaine éducatif :

- un jugement de la cour du banc de la reine a confirmé que les programmes d'immersion ne répondent pas aux besoins éducatifs de la minorité;
- les écoles bilingues sont en voie de disparition. Il n'en restait que quatre en 1986. En 1990, une seule école bilingue subsistait (dans les faits, cette dernière est déjà fréquente à 99 p. 100 par des francophones);
- trois commissions scolaires minoritaires francophones implantées en 1981 ont été transformées en commissions scolaires régulières. Cette transformation fournit ainsi une structure parallèle à la structure majoritaire pour les communautés moins nombreuses;
- le mécanisme régissant les allocations budgétaires aux commissions scolaires a été renouvelé de manière à permettre une plus grande équité dans le cas des petits districts scolaires auparavant pénalisés par leurs effectifs moindres;
- les effectifs de l'ensemble des programmes d'instruction en français regroupent, en 1986, l'équivalent de 80,4 p. 100 de la clientèle admissible telle que nous l'avons calculée en vertu de l'alinéa 23(1)a);
- les écoles homogènes regroupent la grande majorité de ces effectifs, soit 76,3 p. 100 des enfants admissibles en vertu de l'alinéa 23(1)a). Notons également que les effectifs des écoles françaises homogènes ont augmenté de 3,8 p. 100 de 1986 à 1989, alors que, dans l'ensemble, les effectifs scolaires de la province ont diminué de 2 p. 100.

Malgré ces acquis très importants, l'accessibilité à l'instruction en français demeure limitée puisque les conditions d'admission à l'école française exigent que l'enfant connaisse déjà le français. Cette mesure explicite en partie que l'équivalent de 19,6 p. 100 des enfants admissibles en vertu de l'alinéa 23(1)a) ne soit toujours pas inscrit dans les programmes d'instruction de la minorité. Il conviendrait par conséquent d'établir au cours des prochaines années un mécanisme permettant à ces enfants, si les parents le désirent, d'accéder à l'instruction en français.

À l'*Île-du-Prince-Édouard*, la situation a progressé de façon marquée depuis 1982 :

- un renvoi à la cour d'appel a notament établi qu'il revient à la législature provinciale d'établir le nombre minimum d'enfants exigé pour accorder l'enseignement en français. En outre, la minorité est invitée à participer à l'élaboration et à la diffusion des programmes;
- deux modèles de gestion ont fait l'objet de nombreuses discussions au sein de la communauté acadienne. L'un consiste en une commission scolaire provinciale, l'autre favorise la double carte scolaire assortie de commissions scolaires minoritaires;

faire instruire leurs enfants en langue anglaise. Ce jugement a eu pour effet d'invalider la « clause-Québec », clause de la législation linguistique québécoise (loi 101) qui réservait à cette époque l'accessibilité à l'instruction en anglais aux enfants dont les parents avaient étudié en anglais au Québec;

— le *projet de loi n° 107*, adopté par l'Assemblée nationale en décembre 1988, fera en sorte que des commissions scolaires conçues en fonction du critère linguistique et non plus confessionnel seront créées dans l'avenir. En principe, ce projet sera concrétisé une fois sa constitutionnalité établie par les tribunaux;

— en 1986, les effectifs scolaires qui reçoivent l'instruction en anglais, effectifs déterminés par l'alinéa 1(b) et le paragraphe 2 de l'article 23, en l'occurrence les enfants dont un parent a reçu, ou dont un frère ou une sœur a reçu (ou reçoit) son instruction en anglais au Canada, se chiffrent à 111 178 élèves (secteur des commissions scolaires), nombre supérieur au total des enfants de langue maternelle anglaise d'âge scolaire (de 6 à 17 ans) recensés au Québec (86 946 enfants en 1986).

Rappelons en effet que, contrairement à la situation dans les autres provinces et territoires, l'alinéa (1a) de l'article 23, qui accorde l'accessibilité à l'instruction dans la langue de la minorité en fonction de la langue maternelle d'un parent, ne s'applique pas au Québec. Au Chapitre II, nous avons néanmoins établi que, si l'alinéa 23(1a) s'appliquait au Québec, la clientèle scolaire se chiffrerait, en 1986, à 121 513 enfants. Or, 111 862 enfants sont inscrits dans les programmes de la minorité des commissions scolaires établis en vertu des critères en vigueur. Les effectifs dans les programmes de la minorité représentent donc l'équivalent de 91,5 p. 100 de cette clientèle éventuellement admissible. De ce point de vue, la situation de la minorité anglophone du Québec est nettement plus avantageuse que celle de l'ensemble des minorités francophones dans les autres provinces et territoires.

Il faut par contre souligner qu'entre 1971 et 1986, les effectifs scolaires de la minorité anglophone ont diminué de moitié, passant de 248 855 à 111 862⁷ (voir le tableau II-3). Selon la minorité de langue anglaise, cette baisse radicale a entraîné une détérioration marquée de la qualité de ses services éducatifs⁸ : perte de services importants tels que personnel infirmier, travailleurs sociaux, psychologues, conseillers en orientation.

Par ailleurs, d'ici l'adoption des clauses du *projet de loi n° 107* portant sur les commissions scolaires linguistiques, si ce projet de loi est jugé constitutionnel par la Cour suprême, le réseau scolaire de la minorité anglophone continuera à perdre son homogénéité linguistique. En somme, pour assurer au cours des prochaines années l'amélioration des services éducatifs de la minorité anglophone, la minorité de langue anglaise croit qu'il importe d'amender la *Loi constitutionnelle de 1867*, de manière notamment à favoriser l'adoption intégrale du *projet de loi n° 107*. Il serait opportun également de réserver à la minorité anglophone une structure autonome au sein du ministère de l'Éducation.

— la cour suprême de l'Ontario a confirmé par ailleurs le droit des francophones à des services éducatifs de qualité égale à celle des services offerts à la majorité;

— le *projet de loi n° 75* a créé des « sections » de langue française au sein des conseils scolaires de la majorité chargés de gérer de façon exclusive certains aspects touchant l'instruction à la minorité francophone. Le modèle de gestion ainsi préconisé se nomme la « représentation proportionnelle et garantie »;

— un financement complet a été accordé aux écoles secondaires séparées (catholiques) de sorte que, de 1986 à 1989, les effectifs des écoles secondaires françaises du secteur séparé catholique ont augmenté de 243,4 p. 100 (5 691 élèves), alors que le nombre de ces écoles a doublé. Essentiellement, il s'agissait d'un transfert des effectifs du secteur public non confessionnel;

— les effectifs dans l'ensemble des programmes d'enseignement à la minorité (incluant les écoles homogènes), ont augmenté de 1,7 p. 100 de 1986 à 1989 (1 342 élèves);

— dix-huit nouvelles écoles homogènes françaises ont vu le jour entre 1986 et 1989. Dans l'ensemble, les effectifs des écoles homogènes ont augmenté de 5,0 p. 100 (3 627 élèves) durant cette période.

Ces progrès demeurent cependant limités compte tenu des droits à l'instruction et à la gestion conférés par l'article 23 de la *Charte*. Malgré l'augmentation importante des effectifs dans les programmes d'enseignement à la minorité, ceux-ci représentent en 1986 l'équivalent de 57,1 p. 100 de la clientèle admissible telle que nous l'avons calculée en vertu de l'alinéa 23(1a) de la *Charte*, soit 77 412 enfants sur 135 612. Au cours des prochaines années, il faudra donc voir à augmenter les effectifs scolaires francophones.

En ce qui a trait à la gestion scolaire, nous avons démontré au Chapitre IV les inconvénients que comporte le modèle de « représentation proportionnelle et garantie » instauré dans la province. En effet, ce modèle ne répond pas pleinement et ce, sur plusieurs plans, aux obligations découlant de l'article 23, ni aux besoins de la minorité francophone princippalement parce qu'il ne fournit pas de pouvoir décisionnel exclusif sur le service de l'administration générale et des finances. Au cours des prochaines années, il serait préférable de transformer ce système en conseils scolaires linguistiques régionaux. Il serait aussi souhaitable d'élargir l'autorité de la division administrative chargée de l'éducation francophone au sein du ministère de l'Éducation et de lui accorder des ressources correspondantes.

Au *Québec*, les changements survenus depuis 1982 dans la situation des anglophones eu égard à leurs droits éducatifs se sont produits surtout sur le plan de la gestion scolaire :

— en 1984, un jugement de la Cour suprême du Canada a établi que tous les anglophones ayant reçu leur instruction primaire au Canada ont le droit de

En ce qui a trait à la gestion scolaire, la Saskatchewan a élaboré un modèle novateur dont le processus d'élaboration constitue également un exemple de collaboration fructueuse entre le gouvernement, les associations professionnelles et la minorité.

Au cours des prochaines années, les progrès à réaliser devront donc viser surtout l'accès à des écoles homogènes et, puisque l'un va difficilement sans l'autre, l'implantation du système de conseils scolaires tel que prévu.

Au Manitoba, de 1982 à 1989, les francophones ont réalisé des gains même s'ils ont dû essayer un revêrs de taille :

- le statut de l'école franco-manitobaine a été défini par une politique du ministère de l'Éducation; elle vise le développement d'un bilinguisme fonctionnel chez l'enfant et sert de véhicule à la langue et à la culture canadiennes-françaises;
- un modèle de gestion de conseils scolaires régionaux cotifés par une commission scolaire provinciale, élaboré en 1988, fait présentement l'objet de consultations et de discussions dans la communauté francophone;
- à la demande de la Fédération des comités de parents du Manitoba, le gouvernement a porté devant la cour d'appel de la province, par le truchement d'un *Renvoi constitutionnel*, la question de l'interprétation des droits à l'instruction et à la gestion. L'avis consultatif rendu en février 1990 n'a cependant pas confirmé le droit de gestion scolaire de la minorité;
- au chapitre des effectifs scolaires de la minorité, la situation est relativement stable de 1986 à 1989. On remarque une légère diminution dans les écoles homogènes (-1,9 p. 100), mais une hausse certaine dans les écoles mixtes (7,7 p. 100).

En dépit de ces acquis, les effectifs dans les programmes d'enseignement à la minorité représentent en 1986 l'équivalent de 29,4 p. 100 des enfants d'âge scolaire admissibles selon les calculs que nous avons faits en vertu de l'alinéa 23(1)a) de la *Charte*. Les progrès futurs devront donc favoriser une augmentation de cette proportion. Par ailleurs, le modèle de gestion scolaire provincial présentement soumis à la communauté francophone devrait pouvoir être concrétisé et implanté.

L'Ontario a fait des pas de géant au cours des sept dernières années quant à la reconnaissance des droits de la minorité francophone et à la mise en œuvre des mesures visant à en assurer le respect :

- lors d'un *Renvoi constitutionnel* en 1984, la cour d'appel de l'Ontario a confirmé le droit de la minorité francophone à l'instruction en français ainsi que son droit à gérer cette instruction;
- deux commissions scolaires francophones ont été établies depuis lors, une à Toronto et l'autre dans la région d'Ottawa-Carleton;

1 575 enfants sur 21 093, étude en 1986 dans des programmes dispensant l'instruction à la minorité de langue officielle. Dans le cas des écoles homogènes, ce pourcentage tombe à l'équivalent de 2,5 p. 100. Il importe dans l'avenir que ces écarts soient réduits sinon éliminés.

Quant à la gestion scolaire, les francophones de l'Alberta demeurent assujettis aux décisions des commissions scolaires majoritaires, ne possédant pas de système autonome parallèle au système scolaire de la majorité.

En *Saskatchewan*, la minorité francophone a fait les gains suivants, de 1982 à 1989 :

- en 1982, une entente contractuelle a été signée en vue d'accorder à une société de parents un droit de regard sur la gestion d'une école homogène à Saskatoon;
- la Commission des écoles francasaskoises, regroupant les comités de parents francophones de la province, a été fondée en 1983;
- cette commission a proposé, comme modèle de gestion, l'établissement d'une commission scolaire provinciale. Le ministre de l'Éducation n'a pas avalisé ce modèle, même s'il est largement favorisé au sein de la communauté francophone;
- en février 1988, la cour du banc de la reine a confirmé que les francophones ont le droit de gérer leurs écoles homogènes;
- en juin 1988, une entente auxiliaire visant notamment la mise en œuvre d'un système de gestion scolaire par la minorité francophone a été signée entre le gouvernement fédéral et celui de la Saskatchewan. Un groupe de travail multipartite fut mis sur pied par le gouvernement de cette province. Dans un rapport unanime, ce groupe de travail a proposé un modèle de gestion de commission scolaire à deux paliers : conseils scolaires locaux assortis d'un Conseil général provincial. Pour donner suite au rapport Gallant, le gouvernement créa, le 20 septembre 1989, par décret en conseil, le comité de mise en œuvre de la composante francasaskoise du système scolaire de la Saskatchewan;
- les effectifs scolaires dans les programmes d'instruction en français ont augmenté de 18,5 p. 100 (155 élèves) de 1986 à 1989. Cette augmentation est proportionnellement plus rapide dans les écoles homogènes françaises: 60,2 p. 100 (100 élèves).

Malgré ces gains, les inscriptions aux programmes d'enseignement en français représentent en 1986 l'équivalent de 7,8 p. 100 de la clientèle d'âge scolaire admissible telle que nous l'avons calculée en vertu de l'alinéa 23(1)a), soit 838 enfants sur 10 722 enfants admissibles âgés de 6 à 17 ans. Dans le cas des écoles homogènes, ce pourcentage tombe à 1,6 p. 100.

domaines : l'accessibilité à l'instruction, la reconnaissance des droits et la proposition d'un modèle de gestion scolaire pour la minorité.

En Alberta, d'énormes progrès ont été accomplis depuis 1982 et constituent une base d'action pour l'avenir :

- l'Association Georges-et-Julia-Bugnet a été incorporée le 15 mars 1983. Cet organisme a fait des revendications et entrepris des procédures judiciaires pour faire reconnaître les droits de la minorité francophone à l'instruction en français ainsi qu'à la gestion de cette instruction;
- en 1985, la cour du banc de la reine a reconnu aux francophones le droit à « un degré de gestion exclusive » sur leur instruction;
- la cour d'appel provinciale a jugé, en 1987, que la minorité francophone détient un droit de gestion exclusive sur son instruction. Ce tribunal a estimé par contre insuffisants les effets scolaires à Edmonton pour exiger l'établissement d'un système de gestion scolaire autonome et parallèle à celui de la majorité anglophone;
- ce débat a été porté devant la Cour suprême du Canada dont les audiences eurent lieu en juin 1989. Appelée à juger de la constitutionnalité de la *Loi sur l'éducation*, la cour tranchera aussi la question des droits à l'instruction et à la gestion pour la minorité francophone;
- un modèle de gestion contractuel a été soumis à la minorité francophone par la commission scolaire catholique d'Edmonton;
- une commission scolaire francophone inactive (Saint-Isidore) a été réactivée pour gérer l'école homogène Héritage de Jean-Côté;
- la *Loi sur l'éducation* a reconnu pour la première fois en 1988 les droits des francophones à l'instruction en français conférés par l'article 23 de la *Charte*;
- une politique ministérielle émise en 1988 confirme que le nombre d'enfants admissibles à l'instruction dans la langue de la minorité pourrait être suffisant pour établir, dans cinq régions de la province, des écoles homogènes ou encore des programmes d'instruction à la minorité;
- depuis 1983, cinq écoles homogènes ont été fondées;
- les inscriptions dans les écoles dispensant l'enseignement à la minorité, de la 1^{re} à la 12^e année, ont augmenté de 21,4 p. 100 (337 élèves) de 1986 à 1989;
- les inscriptions dans les écoles homogènes, où l'instruction se donne en français de la 1^{re} à la 10^e année, ont augmenté de 79,3 p. 100 (417 élèves) de 1986 à 1989.

Malgré ces gains importants, accumulés en peu de temps, la minorité francophone de l'Alberta n'a pas obtenu légalement la pleine reconnaissance des droits à l'instruction et à la gestion conférés par l'article 23 de la *Charte*. Au chapitre de l'instruction, l'équivalent de 7,5 p. 100 de la clientèle d'âge scolaire admissible en vertu de l'alinéa 23(1)a), soit

2. Par province et territoire

Dressons maintenant, pour chaque province et territoire, un bilan sommaire des acquis en matière de droits éducatifs et de programmes d'instruction pour les minorités de langue officielle.

En *Colombie-Britannique*, les progrès accomplis depuis 1982 pourront servir d'exemple lorsque le moment sera venu de prendre de nouvelles mesures globales pour desservir adéquatement la minorité francophone de cette province :

- l'Association des parents du programme cadre de français (APPCF) a été incorporée le 15 avril 1982. Cet organisme de parents milite activement pour la reconnaissance de leurs droits et pour l'obtention de services dans leur langue;
- depuis 1987, une politique du ministère de l'Éducation, connue sous le nom de *Circular 39*, assure le financement de l'instruction à la minorité francophone à même les fonds publics et encourage l'établissement d'écoles homogènes là où le nombre le justifie;
- une contestation judiciaire a été entamée en cour du banc de la reine en 1989 afin de faire reconnaître le droit à l'instruction et à la gestion de l'éducation de la minorité francophone;
- les trois premières écoles homogènes ont été fondées;
- de 1986 à 1989, les effectifs scolaires de l'ensemble des programmes dispensant l'enseignement en français aux francophones, de la 1^{re} à la 12^e année, ont augmenté de 11,1 p. 100 (169 élèves);
- durant la même période, les effectifs scolaires des écoles homogènes francophones, qui dispensent l'enseignement en français de la 1^{re} à la 10^e année, ont augmenté de 33,9 p. 100 (121 élèves);
- un modèle de gestion de commissions scolaires régionales desservant la minorité francophone est à l'étude en 1990.

Malgré ces progrès importants, l'équivalent de 10,3 p. 100 des enfants admissibles en vertu de l'alinéa 23(1)a) (dont un parent est de langue maternelle française, unique ou double, française et anglaise), est inscrit dans des programmes d'enseignement en français en 1986. Dans le cas des écoles homogènes, ce pourcentage tombe à 2,4 p. 100. Il n'existe d'ailleurs aucune école homogène de niveau secondaire. Au chapitre de la reconnaissance des droits, la *Loi sur l'éducation* de cette province ne fait toujours pas mention des droits des francophones à l'instruction et du contrôle de la gestion de l'instruction en français. Les progrès à accomplir au cours des prochaines années devront donc toucher surtout ces

majoritaire qui sont le plus efficaces, soit les commissions scolaires provinciales, les commissions scolaires minoritaires et les commissions scolaires linguistiques régionales. Ces modèles ont été adoptés au Nouveau-Brunswick, en Ontario et à l'Île-du-Prince-Édouard. D'autres sont à l'état de projet ou en voie d'implantation, notamment au Québec, en Saskatchewan, au Manitoba et, bientôt, en Colombie-Britannique.

Tableau V-4

Évolution des effectifs scolaires de la minorité au sein des écoles homogènes des commissions scolaires, par province et territoire, 1986-1987 et 1988-1989

Province/territoire	Effectifs		Changement (1986-1987 et 1988-1989) (en %)
	(1 ^{re} à 12 ^e année)	1988-1989	
Colombie-Britannique	357	478	+33,9
Alberta	526	943	+79,3
Saskatchewan	166	266	+60,2
Manitoba	3 230	3 170	(-1,9)
Ontario	72 555	76 182	+5,0
Québec	99 190	94 830	(-4,4)
Nouveau-Brunswick	43 737	45 396	+3,8
Ile-du-Prince-Édouard	497	507	+2,0
Nouvelle-Écosse	1 959	1 990	+1,6
Terre-Neuve	0	47	—
Territoires du Nord-Ouest et Yukon	0	0	
Total :	123 027	128 919	+4,8
Minorité de langue française	123 027	128 919	+4,8
Minorité de langue anglaise	99 190	94 830	(-4,4)

Source : Ministère de l'Éducation des provinces et des territoires. Inclut les écoles des commissions scolaires, de la 1^{re} à la 12^e année inclusivement ou l'équivalent.

Dans l'ensemble, la progression des effectifs dans les écoles homogènes de la minorité francophone établies par les commissions scolaires est plus importante que celle des programmes d'enseignement : 4,8 p. 100 par rapport à 1,2 p. 100. La baisse des effectifs de la minorité anglophone du Québec est, pour sa part, moins importante dans les écoles homogènes des commissions scolaires : 4,4 p. 100 par rapport à 5,4 p. 100.

Pour conclure ce bilan des acquis pour l'ensemble du Canada, signalons un quatrième et dernier aspect avec lequel devraient composer désormais les groupes minoritaires et les gouvernements : l'efficacité démontrée des modèles de gestion scolaire parallèles à la structure majoritaire et réservés à la minorité. Au Canada, comme nous l'avons montré au Chapitre IV, les minorités ont expérimenté à ce jour divers modèles de gestion : consultatifs, contractuels ou représentatifs. Ce sont cependant les modèles de type parallèles à la structure

Tableau V-3

Evolution des effectifs scolaires de la minorité au sein des programmes d'instruction des commissions scolaires, par province et territoire, 1986-1987 et 1988-1989

Province/territoire	Effectifs		Changement (1986-1987 et 1988-1989) (en %)
	1986-1987	1988-1989	
	(1 ^{re} à 12 ^e année)		
Colombie-Britannique	1 525	1 694	+11,1
Alberta	1 575	1 912	+21,4
Saskatchewan	838	993	+18,5
Manitoba	5 211	5 241	+0,6
Ontario	77 412	78 754	+ 1,7
Québec	111 178	105 141	(-5,4)
Nouveau-Brunswick	46 086	45 396	(-1,5)
Ile-du-Prince-Edouard	497	507	+ 2,0
Nouvelle-Ecosse	3 655	3 497	(-4,3)
Terre-Neuve	68	230	+238,0
Territoires du Nord-Ouest et Yukon	36	128	+255,6
Total :			
Minorité de langue française	136 903	138 352	+ 1,2
Minorité de langue anglaise	111 178	105 141	(- 5,4)

Source : Ministère de l'Éducation des provinces et des territoires. Inclut les écoles des commissions scolaires dispensant l'enseignement à la minorité : programmes dans les écoles de la majorité, écoles mixtes, bilingues ou homogènes, de la 1^{re} à la 12^e année inclusivement ou l'équivalent.

Nous notons une augmentation dans six provinces et dans les deux territoires. Pour l'ensemble des effectifs de la minorité francophone, l'augmentation est de 1,2 p. 100. Toutefois, les effectifs de la minorité anglophone du Québec ont continué de diminuer, soit de 5,4 p. 100 en deux ans.

Les progrès réalisés quant au nombre d'écoles publiques homogènes, soit les écoles de la minorité établies par les commissions scolaires sont particulièrement intéressants, comme l'illustre le tableau V-4.

Le tableau V-2 conduit quant à lui aux constatations suivantes :

— C'est au Québec et au Nouveau-Brunswick que le pourcentage des effectifs au sein des écoles homogènes des commissions scolaires par rapport à la clientèle admissible en vertu de l'alinéa 23(1)a) est le plus élevé, soit respectivement l'équivalent de 81,6 p. 100 et 76,3 p. 100 (environ quatre enfants sur cinq). Rappelons que cet alinéa ne s'applique pas au Québec. — Vient ensuite l'Ontario, où l'équivalent d'un enfant sur deux (53,5 p. 100), parmi ceux admissibles, est inscrit dans une école homogène des conseils scolaires.

— À l'Île-du-Prince-Édouard, en Nouvelle-Écosse et au Manitoba, les écoles homogènes des commissions scolaires regroupent l'équivalent d'un enfant sur cinq parmi ceux admissibles en vertu de l'alinéa 23(1)a).

— Enfin, l'accès à des écoles homogènes françaises des commissions scolaires est négligeable dans cinq provinces et territoires, soit en Alberta, en Colombie-Britannique, en Saskatchewan, à Terre-Neuve, dans les Territoires du Nord-Ouest et au Yukon. Les pourcentages des effectifs par rapport à la clientèle admissible sont de l'ordre de 2,5 à 0 p. 100.

L'écart entre les effectifs dans les écoles dispensant l'instruction à la minorité de langue officielle et la clientèle admissible en vertu de l'alinéa 23(1)a) dépend de plusieurs facteurs. La présente étude n'avait pas pour objet de déterminer l'importance relative de ces facteurs (des recherches subséquentes pourraient le faire). Rappelons toutefois que nos données et notre analyse nous ont permis de constater que les écarts entre la clientèle admissible en vertu de l'alinéa 23(1)a) et les effectifs réels varient beaucoup d'une province et d'un territoire à l'autre. C'est là, bien sûr, l'incidence d'une situation en évolution. Depuis la promulgation de la *Charte* et en particulier de l'article 23, de nouvelles exigences sont posées; les gouvernements et les minorités apprennent ensemble à innover à partir du passé. En effet, les progrès accomplis depuis 1986 permettent d'ores et déjà de prévoir que cette évolution donnera des résultats tangibles. Le tableau V-3 résume⁶ les changements des effectifs dans les programmes de la minorité des commissions scolaires de 1986 à 1988.

Tableau V-2

Effectifs scolaires* de la minorité au sein d'écoles homogènes par rapport à la clientèle admissible*, par province et territoire, 1986

Province/territoire	(en %)*
Québec *	1,6
Nouveau-Brunswick	76,3
Ontario	53,5
Ile-du-Prince-Edouard	21,8
Nouvelle-Ecosse	18,6
Manitoba	18,2
Alberta	2,5
Colombie-Britannique	2,4
Saskatchewan	1,6
Terre-Neuve	0
Territoires du Nord-Ouest et Yukon	0

* Voir légendes du tableau V-1.

Voici les principales constatations qui se dégagent du tableau V-1 :

- Les pourcentages des effectifs dans les programmes destinés à la minorité dans les commissions scolaires par rapport à la clientèle admissible varient de façon très importante au pays, soit entre 91,5 et 5,3 p. 100. Les effectifs ne regroupent donc nulle part l'équivalent de l'ensemble de la clientèle admissible selon l'alinéa 23(1a).
- C'est au Québec que se trouve la plus grande équivalence d'effectifs de la minorité recevant l'enseignement dans sa langue dans les programmes des commissions scolaires par rapport à la clientèle qui serait admissible en vertu de l'alinéa 23(1a) (91,5 p. 100 ou neuf enfants sur dix).
- Dans le cas des minorités francophones, c'est au Nouveau-Brunswick que cette équivalence est la plus grande, soit 80,4 p. 100 (quatre enfants sur cinq).
- En Ontario, en Nouvelle-Ecosse, au Manitoba et à l'Ile-du-Prince-Edouard, les équivalences varient entre 57,1 p. 100 et 21,8 p. 100.
- Dans les autres provinces et territoires, les équivalences sont de 10 p. 100 ou moins : Colombie-Britannique (10,3 p. 100), Saskatchewan (7,8 p. 100), Alberta (7,5 p. 100), Terre-Neuve (6,1 p. 100), Territoires du Nord-Ouest et Yukon (5,3 p. 100).

comptabilisés ne sont pas exclusivement constitués d'ayants droit¹⁴ et 2) le critère de la langue maternelle repose sur les seules déclarations de langues uniques et doubles (française et anglaise)⁵. Deuxièmement, puisque l'article 23 de la *Charte* a créé une situation nouvelle qui résulte en une évolution de la situation, la demande réelle pour des services scolaires aux minorités de langue officielle peut se situer au delà de l'offre réelle de ces services. Troisièmement, en vertu de leur libre choix, les parents bénéficiaires des droits de l'article 23 de la *Charte* peuvent décider de faire inscrire leur enfant dans les programmes destinés aux enfants de la majorité linguistique.

Notons enfin que l'alinéa 23(1)a) n'est pas actuellement en vigueur au Québec. Notre but étant d'évaluer, indépendamment des variantes provinciales et territoriales, la demande éventuelle de services scolaires en vertu de l'application intégrale de l'alinéa 23(1)a), nous présentions également les données sur le Québec.

Tableau V-1

Effectifs scolaires* dans les programmes d'enseignement à la minorité par rapport à la clientèle admissible**, par province et territoire, 1986

Province/territoire	(en %) ***	
Québec ****	91,5	(9 enfants sur 10)
Nouveau-Brunswick	80,4	(4 enfants sur 5)
Ontario	57,1	(3 enfants sur 5)
Nouvelle-Écosse	34,8	(1 enfant sur 3)
Manitoba	29,4	(3 enfants sur 10)
Ile-du-Prince-Édouard	21,8	(1 enfant sur 5)
Colombie-Britannique	10,3	(1 enfant sur 10)
Saskatchewan	7,8	(1 enfant sur 13)
Alberta	7,5	(1 enfant sur 13)
Terre-Neuve	6,1	(1 enfant sur 16)
Territoires du Nord-Ouest et Yukon	5,3	(1 enfant sur 20)

- * Effectifs dans les programmes d'instruction de la minorité de langue officielle de la 1^{re} à la 12^e année pour les institutions publiques, c'est-à-dire entièrement subventionnées par l'État. Au Québec : de la maternelle à la 1^{re} année.
- ** Clientèle d'âge scolaire (de 6 à 17 ans) de la minorité de langue officielle admissible en vertu de l'alinéa 23(1)a) de la *Charte*, établie d'après la langue maternelle d'un parent (langue maternelle unique et double, française et anglaise). Données provenant d'une compilation spéciale de Statistique Canada, recensement de 1986.
- *** Ces pourcentages peuvent, en réalité, être inférieurs puisque les effectifs ne sont pas exclusivement constitués d'après le critère de l'alinéa 23(1)a).
- **** L'alinéa 23(1)a) ne s'applique pas actuellement au Québec. La clientèle scolaire admissible en vertu de l'article 23 de la *Charte* est déterminée par l'alinéa 1(b) (enfant dont un parent a reçu au Canada son instruction primaire dans la langue de la minorité) et le paragraphe 2 (enfant dont un frère ou une sœur reçoit ou a reçu au Canada son instruction primaire ou secondaire dans la langue de la minorité).

des droits et libertés en 1982. Car la *Charte* fournit aux minorités de langue officielle un instrument juridique de taille qui confère à leurs revendications un poids nettement plus décisif. Elle contribue en quelque sorte à modifier la psychologie minoritaire, surtout dans les provinces anglophones où la minorité francophone représente moins de 3 p. 100 de la population provinciale : Territoires du Nord-Ouest et Yukon, Alberta, Saskatchewan, Colombie-Britannique et Terre-Neuve¹. Les gouvernements provinciaux et territoriaux doivent désormais composer avec cette évolution.

Un deuxième acquis réside dans l'interprétation par les tribunaux des droits conférés aux minorités de langue officielle par l'article 23 de la *Charte*. Les interprétations données par les tribunaux depuis 1982 constituent, après huit années, une jurisprudence favorable aux demandes des minorités de langue officielle. Cette jurisprudence confirme que les minorités de langue officielle bénéficient d'un droit à l'instruction dans leur langue ainsi que d'un droit à gérer elles-mêmes leurs services éducatifs. D'après les jugements rendus par les tribunaux, les gouvernements provinciaux et territoriaux connaissent désormais les options susceptibles de respecter ces droits.

Un troisième acquis provient de l'effet d'entraînement consécutif à l'évolution des services éducatifs accordés aux minorités de toutes les régions du pays. La croissance plus rapide de l'offre de services dans certaines provinces et territoires, croissance confirmée par celle des effectifs scolaires de la minorité, constitue en effet une incitation directe auprès des provinces et des territoires où l'offre de services est proportionnellement moins importante. Cet effet d'entraînement est ressenti également au sein des groupes minoritaires dont les demandes et les actions s'appuient, notamment, sur les acquis obtenus ailleurs au pays par les autres groupes minoritaires de langue officielle.

Dégageons ici les principales tendances de cette évolution pour l'ensemble du Canada². En 1990, des services d'instruction à la minorité de langue officielle sont disponibles dans toutes les provinces et tous les territoires. Il existe cependant des différences importantes d'une province ou d'un territoire à l'autre eu égard à l'accessibilité des services.

En nous fondant sur les données du dernier recensement (1986), nous avons évalué en pourcentages³, pour chaque province et territoire, les effectifs scolaires des minorités qui recevaient à cette date un enseignement public dans leur langue, par rapport à l'ensemble de la clientèle admissible telle que nous l'avons calculée en vertu de l'alinéa 23(1a) de la *Charte*. Aux fins de notre analyse, nous avons réparti les données ainsi obtenues en deux tableaux. Le tableau V-1 compile les effectifs indépendamment des types d'enseignement publics qu'offrent des commissions scolaires : programmes dispensant l'instruction à la minorité dans des écoles de la majorité, des écoles mixtes, des écoles bilingues ou encore dans des écoles homogènes. Le tableau V-2 compile uniquement les effectifs des écoles publiques homogènes.

Les mises en garde formulées antérieurement au Chapitre II valent encore ici. Tout d'abord, sur le plan méthodologique, nos données sont prudentes et conservatrices : 1) les effectifs

La présente étude a permis de faire le point sur divers aspects de la reconnaissance et de la mise en œuvre des mesures assurant le respect des droits conférés par l'article 23 de la *Charte canadienne des droits et libertés* de 1982. Ce dernier chapitre a pour but de dégager des conclusions et des recommandations qui pourront orienter les actions futures des minorités de langue officielle ainsi que celles des gouvernements.

Ce chapitre comprend trois parties. La première vise à dégager les principales constatations de l'étude. Nous présentons d'abord (A), pour l'ensemble du Canada, puis pour chaque province et territoire, un bilan des acquis en matière d'instruction et de gestion scolaire. Nous cernons ensuite (B) les obstacles à franchir pour concrétiser les droits à l'instruction et à la gestion conférés par l'article 23 de la *Charte*.

La deuxième partie du chapitre oriente la réflexion vers l'avenir. Nous y présentons un aperçu de la clientèle scolaire éventuelle des minorités de langue officielle pour 1992, puis indiquons les étapes du processus recommandé pour obtenir la concrétisation des droits conférés par l'article 23 de la *Charte*.

Dans la troisième partie, nous formulons des recommandations susceptibles de guider et de concrétiser l'action des minorités de langue officielle et des gouvernements dans l'ensemble des provinces et des territoires canadiens.

I. CONSTATATIONS DÉCOULANT DE CETTE ÉTUDE

A. BILAN DES ACQUIS

Nombre de changements sont intervenus dans le domaine de l'instruction aux minorités de langue officielle depuis l'avènement de la *Charte canadienne des droits et libertés*. Ces changements constituent aujourd'hui les acquis sur lesquels se fonderont aussi bien les demandes futures des minorités de langue officielle que les actions gouvernementales visant à concrétiser les droits conférés par l'article 23 de la *Charte*. Ces acquis jalonneront le processus d'évolution de l'éducation des minorités de langue officielle au regard des droits nouvellement conférés.

1. Pour l'ensemble du Canada

Les acquis obtenus sur le plan national peuvent inspirer la réflexion et l'action des minorités de langue officielle, et celles des gouvernements dans chaque province et territoire. Voici un bref bilan de ces acquis.

Un premier acquis marque un point de non-retour : la conscience accrue qu'ont développée les minorités de langue officielle quant à leurs besoins et à leurs droits en matière d'instruction et de gestion scolaire. En effet, partout au pays, les minorités l'ont prouvé d'un militantisme plus vigoureux, en particulier depuis l'avènement de la *Charte canadienne*

CHAPITRE V

LA CONCRÉTISATION DES DROITS CONFERÉS PAR L'ARTICLE 23 DE LA CHARTE

- I. CONSTATATIONS DÉCOULANT DE CETTE ÉTUDE
 - A. Bilan des acquis
 - 1. Pour l'ensemble du Canada
 - 2. Par province et territoire
 - B. Obstacles à franchir pour concrétiser les droits conférés par l'article 23
- II. VERS L'AVENIR
 - A. Aperçu du nombre d'enfants admissibles à l'instruction en 1992
 - B. Processus préconisé pour la concrétisation des droits conférés par l'article 23
- III. RECOMMANDATIONS

de la *Charte*

conférés par l'article 23

La concrétisation des droits

CHAPITRE V

19. C'est-à-dire des commissions scolaires protestante et catholique intégrées.
20. Les commissions scolaires catholiques de Grenfield et de Portage-du-Fort.
21. Les commissions scolaires protestantes de Baie-Combeau, Laurentienne et Rouen.
22. Les audiences ont eu lieu en janvier 1990.
23. En Ontario, en Alberta, en Saskatchewan, à Terre-Neuve et au Labrador.
24. Voir, à ce sujet, les sections « Aperçu » et « Québec » du Chapitre II.

Notes

Chapitre IV

1. L'Appendice D fournit la liste complète de ces modèles. Leur référence bibliographique se trouve dans la bibliographie de la province en cause.
2. Pour une liste complète de ces critères, voir la conclusion du Chapitre III.
3. Afin d'uniformiser la terminologie, nous employons l'expression générique « commission scolaire » pour nous référer au palier régional de gestion. Par ailleurs, lorsque nous décrivons le comité des membres élus qui prend les décisions, nous employons l'expression « conseil de la commission scolaire ».
4. Voir la section portant sur les commissions scolaires linguistiques du Québec pour un descriptif du rôle des comités d'orientation.
5. Nous décrivons plus loin dans ce chapitre ces deux modèles de gestion.
6. Ces écoles sont, en l'occurrence, la Native Survival School et la Saskatoon French School.
7. Il s'agit de l'Edmonton Catholic Separate School Board et de l'Edmonton Public School Board.
8. L'école porte le nom de l'association, soit l'école Georges-et-Julia-Bugnet.
9. Nous avons déjà analysé, dans ce chapitre, le premier de ces modèles, les comités consultatifs protégés en Ontario. Par la même occasion, nous avons décrit la structure du deuxième modèle du rapport Sullivan, le Conseil de l'enseignement en langue minoritaire.
10. En font partie les organismes suivants : la Société franco-manitobaine (SFM), le Conseil jeunesse provincial (CJP), les Commissions d'écoles franco-manitobaines (CEFM), la Fédération provinciale des comités de parents (FPCP), les Éducatrices et éducateurs francophones du Manitoba (EEFM).
11. Rappelons que cette population se chiffre en 1986 à 6 500 personnes de français langue maternelle (sans que ce soit leur langue maternelle unique) ou 5,1 p. 100 de la population totale de l'île.
12. Cet organisme a été fondé en 1983 en vue de regrouper les comités de parents de la minorité officielle de la Saskatchewan.
13. Notamment de la Commission scolaire Northern Lights à Prince Albert, établie pour la population métis et indienne non inscrite.
14. Rappelons que chacune de ces divisions comprend les secteurs suivants : 1) développement pédagogique (programmes d'études et services aux élèves), 2) évaluation et perfectionnement (évaluation des enseignants et perfectionnement pédagogique) et 3) services financiers aux conseils scolaires.
15. Il s'agit des services suivants : transport, matériel, manuels, bâtiments, certification des enseignants et administration du personnel.
16. En Colombie-Britannique, ce modèle est également à l'étude. En effet, le rapport Xatruch (1990) propose l'élaboration de trois ou quatre commissions scolaires régionales.
17. Deux commissions scolaires publiques de langue anglaise également pour Ottawa et Carleton.
18. Dans le cas du *projet de loi n° 75*, rappelons-le, la situation inverse se produit : dans le modèle de la représentation proportionnelle et garantie, toute responsabilité non spécifiée revient au conseil plénier.

III. CONCLUSIONS

Parmi les 13 modèles, proposés ou en vigueur, seuls ceux ayant dépassé le seuil critique d'adhésion aux principes et aux objectifs de la gestion pour les minorités de langue officielle peuvent répondre efficacement aux droits conférés. Il s'agit des modèles appartenant à la dernière typologie, soit ceux qui sont parallèles à la structure majoritaire.

Cependant, dans l'élaboration et la bonification de ces modèles, les minorités doivent être particulièrement attentives à deux aspects de la gestion :

le regroupement permettant d'atteindre le nombre suffisant, soit la création d'une carte scolaire pour regrouper les bassins de population minoritaire;

la centralisation-décentralisation des services, soit l'élaboration d'un système permettant aux trois paliers décisionnels (local, régional et provincial) de participer activement aux décisions qui les touchent particulièrement.

Ce modèle de conseil scolaire donne tous les pouvoirs de décision à la minorité francophone tout en la regroupant sous deux paliers régionaux. Il répond aux principes et aux objectifs de la gestion minoritaire mais n'accorde aucun pouvoir au palier local.

c) Québec : *Les commissions scolaires linguistiques*

Historiquement, le système scolaire du Québec est organisé en fonction de critères confessionnels. Tout le territoire est découpé selon une double carte scolaire de commissions scolaires catholiques (201), protestantes (29) et multi-confessionnelles (protestantes-catholiques) (4). *Le projet de loi n° 107, Loi sur l'instruction publique*, adopté à l'Assemblée nationale en décembre 1988, établit des commissions scolaires linguistiques et accorde une participation locale accrue pour une grande partie du territoire québécois.

La loi permet l'organisation de commissions scolaires linguistiques et applique une double carte scolaire. Le cas des commissions scolaires protégées par l'article 93 est traité différemment.

La loi laisse aux commissions scolaires catholiques et protestantes des villes de Québec et de Montréal, aux commissions scolaires dissidentes catholiques et aux commissions scolaires dissidentes protestantes, le statut confessionnel qu'elles possédaient déjà en 1867.

La minorité obtient tous les *pouvoirs décisionnels que possède la majorité*.

La grande innovation du modèle consiste en l'accroissement du pouvoir décisionnel local par l'établissement de conseils d'orientation. Majoritairement composé de parents, ce comité regroupe au minimum deux enseignants, un représentant du personnel non enseignant, deux élèves du second cycle du secondaire (10^e et 11^e années) et le directeur de l'école.

Le modèle de gestion pour la minorité anglophone du Québec répond, tout comme les autres modèles de structure parallèle à celle de la majorité ainsi qu'aux objectifs et aux principes de l'article 23, mais les modalités de son implantation sur le territoire de l'île de Montréal, qui regroupe une grande partie de la minorité anglophone, sont incertaines. Ce modèle accroit ainsi le nombre de commissions scolaires dans cette région en superposant à celles déjà existantes, une nouvelle commission scolaire anglophone.

La mise en œuvre du projet de loi du Québec ne pourra se faire qu'après que la cour d'appel en aura confirmé la constitutionnalité. Par la suite, sa mise en application démontrera si la tentative d'une plus grande autonomie locale permet d'atteindre ses objectifs.

Ce modèle omet cependant de regrouper la minorité aux trois paliers décisionnels. Le palier régional est desservi par une commission scolaire mais on ne prévoit pas de regroupement décisionnel sur les plans local et provincial.

4. Les commissions scolaires linguistiques régionales

Quatre provinces ont mis en vigueur des commissions scolaires linguistiques régionales : le Nouveau-Brunswick, l'Île-du-Prince-Édouard (avant 1990), l'Ontario et le Québec.

a) *Ontario : Le Conseil des écoles françaises de la communauté urbaine de Toronto*
En 1986, le projet de loi n° 75 modifie la Loi sur la municipalité de la communauté urbaine de Toronto et crée un Conseil des écoles françaises du Grand Toronto qui entre en fonction le 1^{er} janvier 1989.

Le modèle d'un conseil scolaire linguistique s'insère à Toronto dans un système à deux paliers : sept conseils d'éducation « de secteurs » (régionaux) et un conseil scolaire du Grand Toronto regroupant des représentants nommés par les conseils de secteurs.

Le Conseil des écoles françaises a les mêmes droits et responsabilités que les six autres conseils de secteurs et assure la gamme complète des services aux francophones. Par définition, le modèle de commission scolaire linguistique régionale répond aux principes et aux objectifs de la gestion minoritaire.

Les inconvénients du modèle de Toronto sont :

- un partage des responsabilités financières avec le conseil scolaire qui pourrait être litigieux;
- un manque de pouvoir décisionnel sur le plan local;
- surtout le défaut du regroupement de toutes les personnes admissibles selon l'article 23, notamment des parents francophones catholiques.

b) *Ontario : Le Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton*

Le Conseil de langue française d'Ottawa-Carleton reprend généralement le modèle des « sections » de la représentativité proportionnelle et garantie qu'il améliore afin de mieux répondre aux droits confessionnels entérinés par l'article 93 de la Loi constitutionnelle de 1867.

Le projet de loi n° 160, sanctionné en 1988, établit un Conseil plénier composé de deux sections, l'une catholique, l'autre publique. Huit conseillers sont élus pour la section publique et 14 pour la section catholique. Ils gèrent exclusivement les services touchant l'enseignement dans les classes ou les écoles relevant de leur compétence.

a) *Le conseil scolaire linguistique et le conseil scolaire minoritaire du Nouveau-Brunswick* Par suite du *Rapport du comité sur l'organisation et les frontières des districts scolaires du Nouveau-Brunswick*, la loi scolaire du Nouveau-Brunswick (1981) énonce clairement que tous les districts scolaires sont établis en districts linguistiques, d'expression française ou d'expression anglaise.

Les conseils scolaires anglophones ou francophones sont répartis sur une *double carte scolaire*.

L'originalité du système du Nouveau-Brunswick réside dans le concept du conseil scolaire minoritaire qui a été implanté entre 1982 et 1985. Dans les régions où la population de la minorité de langue officielle est moindre, les conseils scolaires minoritaires sont établis conformément à l'article 18.1 (1b) de la *Loi sur l'éducation* sur l'initiative du ministre ou obligatoirement dans un délai de six mois dans les conditions suivantes :

lorsque des parents (i) qui résident dans ce district scolaire (ii) dont la langue n'est pas la langue officielle présidant à l'organisation du district scolaire, et (iii) qui sont les parents d'au moins 30 enfants en âge de fréquenter l'élémentaire, lui présentent une requête conformément aux règlements [...].

Les conseils scolaires majoritaires et minoritaires ont les mêmes pouvoirs. Aujourd'hui, il ne reste qu'un seul conseil scolaire minoritaire d'expression anglaise, celui d'Edmunston. Malgré leurs *avantages* et en raison d'une représentativité moindre (trois ou cinq personnes) et de la nomination des membres, les conseils scolaires minoritaires constituaient une structure inégale à celle de la majorité. C'est pourquoi un *Arrêté ministériel* (1985) a transformé les trois conseils scolaires minoritaires francophones en conseils scolaires ordinaires.

En établissant un double système fondé sur la langue, le modèle du Nouveau-Brunswick permet une *égalité de services*. Toutefois, c'est un modèle qui ne serait pas viable sans une structure parallèle, établie au ministère, étant donné l'orientation centralisatrice du système d'éducation de la province.

b) *Une commission scolaire linguistique et une commission scolaire minoritaire à l'Île-*

du-Prince-Édouard

Faisant suite aux demandes de la Société Saint-Thomas d'Aquin, un rapport intitulé *La gestion scolaire en milieu minoritaire francophone à l'Île-du-Prince-Édouard* est présenté en octobre 1987 (Arsenault). Il décrit un processus d'adaptation du modèle du Nouveau-Brunswick : rencontres d'information, sondage, proposition de modèle. Cette proposition reprend essentiellement la double carte scolaire assortie d'une clause prévoyant l'établissement de conseils scolaires minoritaires du Nouveau-Brunswick.

de 21 membres. Les recommandations du comité présentées dans son rapport publié en juin 1989, *Une composante du système scolaire de la Saskatchewan au service des Fransaskois*, ont été acceptées par le ministre de l'Éducation.

Deux *paliers décisionnels* sont institués. Au palier provincial sont regroupés les services administratifs, comptables et de programmation. Au palier local, le comité exécutif du comité de parents gère les activités quotidiennes de l'école.

Voici les principales caractéristiques de ce modèle proposé. Dans une communauté où existe déjà une école française, une commission scolaire locale, appelée Conseil scolaire Fransaskois de (ville, village, nom de l'école), serait fondée. Ce conseil serait formé de cinq à dix membres élus le troisième mercredi d'octobre pour une période de trois ans, selon l'article 32 de la *Loi sur l'éducation* de la Saskatchewan. Ces membres devront cependant être parents et avoir un enfant inscrit à l'école française.

Les conseils scolaires Fransaskois devraient exercer les mêmes pouvoirs et responsabilités que ceux des commissions scolaires de la province; ces pouvoirs et responsabilités sont décrits dans les articles 91 à 95 de la *Loi sur l'éducation*. En particulier, un conseil scolaire Fransaskois a comme tâche principale de veiller au fonctionnement de son école française et peut décider, notamment, du statut confessionnel de son école.

Sur le plan provincial, le mandat de l'organisme central, le Conseil général des écoles Fransaskoises est de fournir un soutien aux conseils scolaires locaux. Ce conseil général sera composé de deux représentants par école jusqu'à ce qu'il y ait cinq conseils scolaires dans le système. Lorsqu'il y en aura plus de cinq, chaque conseil scolaire nommera un représentant au conseil général.

Les *avantages* de ce modèle sont : le regroupement géographique d'une petite population sur un vaste territoire, le pouvoir de décision sur les aspects essentiels de l'éducation de la minorité, le regroupement sur deux paliers (local et provincial), la force d'action facilitée.

Les *inconvenients* de ce modèle sont les suivants :

— le *financement* n'est pas assuré par les taxes mais plutôt par un système de subventions, ce qui force la minorité à devoir constamment réagir aux décisions du gouvernement provincial;

— la *représentativité* est établie en fonction des parents et non de la collectivité.

3. Le conseil scolaire minoritaire et le conseil scolaire linguistique régional

En général, ce type de modèle institue un régime dualiste pour les populations de langue officielle; il est plus facilement instauré dans les provinces où les droits confessionnels ne sont pas entérinés. Il est mis en vigueur au Nouveau-Brunswick.

partir de ses constatations :

- la possibilité de l'extension de la compétence de la commission scolaire de l'unité n° 5 (région Evangéline) à tous les francophones, peu importe où ils demeurent dans la province;
- la nécessité de créer, au ministère de l'Éducation, une direction générale de l'enseignement en français. (p. 3)

La première recommandation est mise en vigueur en 1990. La deuxième ne l'est pas encore.

Les pouvoirs et les responsabilités attribués au conseil de la commission scolaire provinciale de la minorité francophone sont les mêmes que ceux des conseils des divisions tels que décrits par les articles 13 à 36 de la *Loi scolaire*. De plus, la commission scolaire francophone a la responsabilité d'ouvrir des classes françaises là où le besoin est manifeste ou encore de fournir le transport vers ces classes ou ces écoles.

La commission scolaire francophone de l'unité n° 5 doit également transmettre aux parents l'information sur les programmes offerts ou à offrir en français. Elle planifie toute nouvelle offre de services, sous réserve de l'approbation du ministre. La désignation de nouvelles écoles françaises est la responsabilité du ministre.

Le conseil de la commission scolaire est composé de dix membres élus de la région administrative antérieurement connue sous le nom d'unité n° 5, région Evangéline, et de cinq autres membres élus.

Les avantages de ce modèle sont : le regroupement géographique d'une petite population sur un vaste territoire, le pouvoir de décision sur les aspects essentiels de l'éducation de la minorité, la force d'action facilitée.

Les inconvénients de ce modèle sont les suivants :

- l'autonomie locale n'est pas assurée;
- la commission scolaire francophone doit obtenir l'approbation du ministre pour toute nouvelle offre de services;
- aucune unité n'est prévue au sein du ministère de l'Éducation.

2. Les commissions scolaires linguistiques locales assorties d'un Conseil général provincial

Le 14 juin 1988, le gouvernement de la Saskatchewan signalait avec le gouvernement fédéral une entente destinée à renforcer l'usage du français dans cette province. L'article 3 de cette entente veut que la province consente, en consultation avec la communauté francophone, « à mettre en œuvre un système de gestion et de contrôle des établissements scolaires ». En vertu de cet accord, le ministre de l'Éducation de la Saskatchewan a donc nommé un comité

a) *Le modèle de commission scolaire provinciale du Manitoba*
 En 1988, le Comité directeur des structures scolaires (CDSS) du Manitoba, composé de membres de la Société franco-manitobaine (SFM), du Conseil jeunesse provincial (CJP), des Commissaires d'écoles franco-manitobains (CEFM), de la Fédération provinciale des comités de parents (FPCP), des Éducatrices et éducateurs francophones du Manitoba (EEFM) a publié un rapport intitulé *La gestion des écoles : un modèle à suivre*. Ce modèle de gestion décrit la formation d'une commission scolaire provinciale.

L'exercice des pouvoirs est réparti sur *trois paliers* : provincial, régional et local. Il est indiqué, d'emblée, que la commission scolaire provinciale a les mêmes pouvoirs que les autres commissions scolaires de la province. La commission scolaire provinciale formée de 11 commissaires élus par régions et embauche un directeur général, des coordonnateurs de programmes, des coordonnateurs de services spéciaux ainsi qu'un directeur adjoint des finances.

Quatre conseils régionaux des comités d'école sont composés d'un délégué de chaque comité d'école, de deux commissaires provinciaux de la région et de l'adjoint régional à la direction générale (provinciale). Le rôle de ce comité est de définir les besoins de la région et de représenter cette dernière à la commission provinciale.

Le *comité d'école local* est composé de représentants des parents, de la direction, d'un représentant des enseignants et des étudiants. Son rôle est de présenter le point de vue de l'école locale auprès du conseil régional.

Le modèle de gestion manitobain mise sur la nécessité de l'*homogénéité linguistique* et sur le besoin de regrouper à chaque palier décisionnel. Il tend à la réparation d'une situation historique subie par les Franco-Manitobains et à l'épanouissement de la collectivité. Ses principes sont clairement définis.

Le *désavantage* majeur du modèle consiste en ce que les champs décisionnels de divers paliers (local, régional et provincial) ne sont pas clairement circonscrits.

b) *Le modèle de commission scolaire provinciale de l'Île-du-Prince-Édouard*
 Faisant suite à l'arrêt rendu dans le *Renvoi constitutionnel* qui accordait un droit de participation à la minorité, le gouvernement de l'Île-du-Prince-Édouard apporte des amendements à la loi scolaire en 1990. Ces règlements permettent la formation d'une commission scolaire provinciale.

En 1984, la Société Saint-Thomas d'Aquin avait demandé à MM. Lionel Desjarlais et Pierre Michaud d'effectuer une étude permettant à la Société de négocier en connaissance de cause les droits de la minorité avec le ministère de l'Éducation. Le rapport intitulé *Attentes et aspirations des Acadiens de l'Île-du-Prince-Édouard* présente deux recommandations à

— là où il achète les services pour une minorité de plus de 300 élèves ou encore plus de 10 p. 100 de sa population est étudiante.

Par le *projet de loi n° 75*, ce modèle répartit les domaines de gestion exclusivement réservés à la minorité et les champs de décision partagés avec la majorité.

La représentation proportionnelle et garantie, tout en ayant l'*avantage* pour le gouvernement de garder intacte la carte scolaire, ne garantit pas la mise en vigueur des composantes essentielles à l'épanouissement de la minorité. Parmi les *inconvenients*, cette dernière n'a pas le contrôle des aspects vitaux suivants :

1. *au service des finances et de l'administration générale* : l'administration du service, la préparation et la surveillance du budget, le contrôle interne, la paye, l'établissement des recettes à percevoir (si le système demande une levée de taxes), le conseil des commissaires ou des personnes élues ou nommées, la direction générale, le secrétariat général et les politiques;

2. *au service du personnel* : l'administration du service, le perfectionnement professionnel, la rémunération du personnel;

3. *au service de l'équipement* : l'administration du service.

Quoique ce modèle constitue une nette amélioration par rapport aux comités consultatifs, il réduit toujours la minorité à l'impuissance, la forçant à réagir aux décisions qu'elle doit partager avec la majorité, décisions qui ont des répercussions fondamentales sur l'éducation minoritaire.

Par les modèles représentatifs, le regroupement géographique nécessaire pour la minorité de langue officielle est toujours soumis aux normes de la majorité. En effet, ils n'établissent pas de double carte scolaire regroupant la minorité et recoupant le territoire majoritaire.

D. LES MODÈLES PARALLÈLES À LA STRUCTURE MAJORITAIRE

Parmi les modèles fournissant une structure parallèle à la structure de gestion scolaire adoptée pour la majorité, nous retrouvons : 1) les commissions scolaires provinciales, 2) les commissions scolaires locales assorties d'un Conseil général provincial, 3) le conseil scolaire minoritaire et 4) la commission scolaire linguistique régionale.

1. Les commissions scolaires linguistiques provinciales

Un des deux modèles de commission scolaire linguistique provinciale est mis en vigueur en 1990, celui de l'Île-du-Prince-Édouard.

Les nombreuses doléances décrites par les parents indiquent que ce contrat présente pour la minorité les mêmes inconvénients que ceux décrits plus haut pour les comités consultatifs. De plus, la structure du contrat n'oblige pas la commission scolaire majoritaire à accepter les recommandations du comité de parents francophones. Un manque de communication et d'information existe entre les deux parties créant ainsi « un climat de méfiance, d'appréhension, de cynisme qui, bien que déplorable, est compréhensible ».

2. La proposition du Edmonton Catholic School Board (Alberta, 1987)

Une deuxième entente contractuelle a été proposée à *Edmonton* entre la Société des parents des écoles francophones d'Edmonton et le Edmonton Catholic School District.

La *proposition d'Edmonton* (1987) reprend essentiellement le contrat de Saskatoon en ajoutant cependant un organigramme précis et en déléguant un plus grand nombre de responsabilités à la minorité. Le pouvoir de décision finale ne lui est pas attribué; il demeure la responsabilité de l'Edmonton Catholic School Board.

Ces ententes contractuelles ne répondent pas aux besoins de la minorité de langue officielle. D'ailleurs, l'expérience du contrat de Saskatoon pousse le Conseil de l'école canadienne-française de Saskatoon à conclure (1988) que le gouvernement de la Saskatchewan doit mettre sur pied une commission scolaire provinciale pour la minorité.

C. LES MODÈLES REPRÉSENTATIFS

Les modèles représentatifs sont originaires de l'Ontario.

1. La représentation directe (Ontario, 1984)

Le premier modèle est la *représentation directe* proposée en 1984 par le Comité d'études sur la gestion de l'éducation en langue minoritaire. Ce modèle fonde la représentation des minoritaires (à la commission scolaire de la majorité) sur la valeur de leurs propriétés résidentielles et agricoles par rapport à la valeur totale de la division scolaire. Un nombre minimum de quatre conseillers est garanti et le nombre de membres du conseil de la commission scolaire demeure inchangé.

Étant fondé sur la réalité économique, c'est-à-dire sur l'évaluation des biens de la minorité et non sur les droits à l'éducation, ce modèle est d'emblée inacceptable. Il ne fut d'ailleurs jamais implanté.

2. La représentation proportionnelle et garantie (Ontario, 1986)

Depuis 1986, la *représentation proportionnelle et garantie* établit des « sections » de langue minoritaire (française ou anglaise) partout où :

— une commission scolaire est chargée des classes des écoles de la minorité, ou

II. PRÉSENTATION SCHEMATIQUE ET EVALUATION DES MODELES ELABORES POUR LES MINORITES DE LANGUE OFFICIELLE

A. LES MODELES CONSULTATIFS

Les *comités consultatifs* sont des mécanismes de participation créés pour que les membres des groupes majoritaires puissent influencer le pouvoir de décision d'une commission scolaire. Ce ne sont pas, à proprement parler, des modèles de gestion. C'est cependant le mécanisme que favorisent plusieurs gouvernements provinciaux pour la gestion des minorités de langue officielle.

Un comité consultatif établi comme modèle de gestion pour la minorité de langue officielle ne peut répondre aux besoins de cette minorité à cause de *inconvenients* énumérés ci-dessous :

- il ne fournit pas de regroupement de la minorité par une carte scolaire établie en fonction des besoins de cette minorité;
- il ne fournit pas à la minorité les moyens de prendre en charge son épanouissement;
- il ne vise pas l'égalité de traitement entre la minorité et la majorité;
- le contrôle du *budget* par la minorité est inexistant;
- l'*homogénéité* linguistique de la minorité n'est pas respectée;
- il ne dispense pas les *pleins droits* conférés par l'article 23;
- il opte pour le *statu quo* et ne vise pas à modifier une situation historique qui ne favorise pas l'épanouissement de la communauté minoritaire.

Les comités consultatifs de l'Ontario sont protégés par la loi lorsque les commissions scolaires majoritaires doivent conclure des ententes avec d'autres commissions scolaires pour l'instruction d'élèves résidant dans leur territoire. On y retrouve les mêmes défauts que ceux décrits précédemment. En plus, ces comités font des recommandations à une commission scolaire autre que celle qui propose les services.

B. LES MODELES CONTRACTUELS

Deux modèles contractuels existent en Saskatchewan (en vigueur) et en Alberta (proposé).

1. Le contrat de Saskatoon (Saskatchewan, 1982)

Une première entente contractuelle a été établie en 1982 à Saskatoon entre le Conseil de l'école canadienne-française de Saskatoon Inc. et le Board of Education of the St. Paul's Roman Catholic Separate School Division #20.

Le contrat de Saskatoon (1982) donne aux parents un rôle d'experts-conseils.

dans l'éducation de leurs enfants est également historique. De ces facteurs, nous concluons que les modèles de gestion minoritaire doivent être surtout attentifs à cette dimension.

Au palier régional, se situe le regroupement permettant une plus grande efficacité et l'emploi de services professionnels, plus spécialisés et plus dispendieux. Le palier régional doit demeurer pourvoyeur de services et propice à un rassemblement culturel efficace. C'est le palier décisionnel qui prime dans la majorité des modèles. Il faut le conserver mais procéder à une délégation judiciaire des pouvoirs au palier local.

L'importance du palier provincial n'est plus à démontrer. Après avoir indiqué la nécessité d'un regroupement provincial de la minorité linguistique, nous voulons souligner de nouveau le rôle que joue le ministère de l'Éducation. Un modèle de gestion pour la minorité ne saurait réussir sans qu'une section ne la représente au sein du ministère puisqu'il est responsable de l'élaboration des lignes directrices relatives à l'éducation. Le ministère détiendrait le pouvoir d'influence, le pouvoir de persuasion et même celui de prendre les décisions structurales.

Afin de favoriser une réflexion sur la centralisation-décentralisation des services, nous reprenons la grille d'analyse utilisée lors de cette étude. Le tableau IV-21 indique quelles composantes pourraient être situées aux divers paliers : local, régional et provincial. Nous présumons que la gestion est complètement entre les mains de la minorité et tire ses origines de la typologie du modèle parallèle à la structure majoritaire.

IV. RÉSUMÉ

I. TYPOLOGIE DES MODÈLES ACTUELS ET PROPOSÉS

Quatre types de modèle ont été élaborés au Canada pour la gestion des services éducatifs par les minorités de langue officielle :

- A. les modèles consultatifs;
- B. les modèles contractuels;
- C. les modèles représentatifs;
- D. les modèles parallèles à la structure majoritaire.

Sept systèmes de gestion fondés sur cette typologie sont actuellement en vigueur (à l'exception des modèles consultatifs composés de comités de parents dans la majorité des provinces), et six autres sont à l'état de projet.

Cependant, quoique ces modèles adhèrent aux principes et aux objectifs établis, plusieurs difficultés restent à résoudre. Nous les avons notées lors de notre analyse. Elles sont également ressorties de la grille d'analyse adoptée et se rapportent, en général, à deux points : 1) la question du nombre suffisant et 2) la centralisation-décentralisation.

1. Le nombre suffisant

Les « nombres suffisants » constituent la condition *sine qua non* de l'obtention des droits conférés par l'article 23. Or, cette condition étant soumise à la délimitation du territoire, il est toujours possible d'atteindre le nombre suffisant, que ce soit sur le plan local, régional ou provincial. Les modèles que nous venons d'analyser démontrent que les instances compétentes devraient pouvoir s'adapter à cette situation. Les bassins démographiques de la majorité ne peuvent donc convenir. Or, les cartes scolaires en vigueur dans toutes les provinces et territoires, à l'exception de celles du Nouveau-Brunswick et, partiellement, de celle de l'Île-du-Prince-Édouard avant 1990, sont organisées de façon à effectuer les regroupements de la majorité. Une carte scolaire établie pour regrouper la minorité de langue officielle de chaque province et territoire devra cependant être créée. Nous constatons donc qu'une double carte scolaire devient l'outil de base de la mise en œuvre des mesures assurant le respect des droits de gestion conférés par l'article 23.

De la difficulté que crée l'obtention du nombre suffisant, nous tirons une conclusion générale pour les modèles de gestion scolaire : la structure de gestion adoptée dépend du regroupement effectué pour obtenir le nombre justifiant la gestion. Ainsi, un rassemblement provincial aura pour effet d'établir une structure s'appuyant sur le plan provincial, en déléguant, en tout ou en partie, les pouvoirs décisionnels aux paliers régional et local. Le modèle sera alors, par exemple, celui d'une commission scolaire provinciale assortie de comités régionaux ou de comités de parents d'écoles. De même, un regroupement régional, vaste ou restreint, englobera tous les bassins d'une partie de la province, les plus éloignés comme les plus proches. Le modèle le plus propice sera alors celui de la commission scolaire linguistique ou encore, par exemple, celui d'un conseil scolaire minoritaire, comme au Nouveau-Brunswick.

2. La centralisation-décentralisation

Une deuxième difficulté a trait à l'élaboration et à la mise en œuvre d'un modèle de gestion pour les minorités de langue officielle. Elle n'est pas propre aux minorités mais les concerne particulièrement. Il s'agit de la difficulté qui émane du tandem centralisation-décentralisation. Pour être efficace, la structure de gestion minoritaire, nous l'avons vu, doit se manifester aux trois paliers décisionnels.

Tout d'abord, l'aspiration à l'autonomie, la grande disparité des besoins, la méfiance des campagnes envers les villes ou d'un village envers l'autre, les divers degrés d'assimilation, sont des facteurs qui plaident tous pour la nécessité d'un regroupement décisionnel sur le plan local. Les parents et la communauté s'intéressent plus particulièrement à ce qui les touche de près. Le mouvement vers une plus grande autonomie décisionnelle des parents

2. Inconvénients du point de vue des principes présidant à l'élaboration de modèles :

- Ils n'assurent pas l'homogénéité linguistique.
- Ils ne regroupent pas la minorité aux trois paliers décisionnels : local, régional et provincial.
- Ils ne fournissent pas de financement indépendant viable et équitable.

Ces modèles s'adaptent mal aux raisons intrinsèques qui guident les revendications des minorités de langue officielle. Ils ne peuvent assurer l'épanouissement de la minorité, ni modifier la situation peu favorable à cet épanouissement. Par-dessus tout, ils ne fournissent pas aux minorités de langue officielle les moyens de prendre en charge leur propre épanouissement.

C. LES MODÈLES ADHÉRANT AUX OBJECTIFS ET AUX PRINCIPES ÉNONCÉS, ET LES DIFFICULTÉS À RÉSOUTRE

Seuls les modèles appartenant à la catégorie des structures parallèles aux structures majoritaires peuvent répondre aux exigences posées par les objectifs et les principes que nous avons énoncés. Ils sont proposés ou déjà en vigueur dans la majorité des provinces canadiennes : en Saskatchewan, au Manitoba, en Ontario (deux modèles), au Québec, au Nouveau-Brunswick, à l'Île-du-Prince-Édouard (deux modèles) et, bientôt, en Colombie-Britannique. Ces huit modèles adhérent aux objectifs et aux principes de la gestion scolaire par les minorités de langue officielle appartenant à quatre sous-catégories :

- les commissions scolaires linguistiques provinciales (Île-du-Prince-Édouard, Manitoba);
- les commissions scolaires linguistiques locales assorties d'un Conseil général provincial (Saskatchewan);
- le conseil scolaire minoritaire et le conseil scolaire linguistique régional (Nouveau-Brunswick et Île-du-Prince-Édouard);
- les commissions scolaires linguistiques régionales (Ontario : Toronto et Ottawa-Carleton, et Québec).

Parmi ces modèles, six sont en vigueur ou le seront probablement dans un avenir assez rapproché : le système du Nouveau-Brunswick, la commission scolaire Evangéline de l'Île-du-Prince-Édouard, les deux conseils régionaux de l'Ontario (Toronto et Ottawa-Carleton), les commissions scolaires transsaskoises de la Saskatchewan et les commissions scolaires linguistiques du Québec.

III. CONCLUSIONS

A. LE BUT DE L'ANALYSE

La description et l'évaluation des modèles de gestion scolaire minoritaire que l'on retrouve dans ce chapitre visent à déterminer les types de modèles dont l'efficacité a été démontrée quant au respect des droits conférés par l'article 23 de la *Charte canadienne des droits et libertés*.

Pour ce faire, nous avons d'abord détaillé les objectifs visés par cet article (Chapitre III) puis établi les principes devant régir l'élaboration de tout modèle de gestion scolaire pour les minorités de langue officielle. Ces critères ont formé notre base d'évaluation des 13 modèles de gestion scolaire que nous avons recensés. Nous avons présenté un compte rendu détaillé de notre analyse pour qu'ultérieurement l'élaboration et l'établissement de modèles de gestion scolaire soit guidée par des choix judicieux et viables.

Parmi les 13 modèles de gestion scolaire pour et par les minorités de langue officielle, sept sont en vigueur et six sont à l'état de projet. Ces modèles ont été catégorisés selon le type de pouvoirs accordés à la minorité. Une typologie progressive de pouvoirs démontre que les modèles peuvent être classés selon les catégories suivantes : consultatifs, contractuels, représentatifs et parallèles à la structure majoritaire.

B. SEUL CRITIQUE : LES MODÈLES INEFFICACES EN FONCTION DES OBJECTIFS ET DES PRINCIPES PROPOSÉS

La typologie des modèles évalués fait apparaître un seul critère d'efficacité de la gestion scolaire en fonction des principes et objectifs proposés. Les modèles de type consultatifs, contractuels ou représentatifs n'adhèrent pas aux principes et aux objectifs de la gestion scolaire minoritaire que nous avons décrits. Voici le résumé de leurs inconvénients.

1. Inconvénients du point de vue des objectifs :

- Ils ne mettent pas en œuvre les mesures assurant le respect des pleins droits conférés par l'article 23 de la *Charte*.
- Ils ne fournissent pas l'égalité de traitement entre la minorité et la majorité. Ils ne permettent pas de regrouper de la minorité (origine ethnolinguistique) sous une même égide ou structure des trois aspects de la gestion : le pouvoir de décision, le pouvoir d'influence et les personnes touchées par la gestion.
- Ils ne permettent pas la prise de décisions sur tous les aspects vitaux des conditions d'épanouissement de la minorité.

Cependant, le *projet de loi n° 107* ne prévoit pas spécifiquement la réorganisation des services du ministère de l'Éducation en services linguistiques, quoique cette transformation soit en cours. Le regroupement linguistique au palier décisionnel provincial est très important au Québec puisque le ministère exerce un pouvoir de décision et d'influence assez vaste, de sorte que les pouvoirs du palier régional se trouvent réduits à une mise en application du régime pédagogique.

En outre, le *projet de loi n° 107* conserve le statut confessionnel aux commissions scolaires de Montréal, de Québec ainsi qu'aux cinq commissions dissidentes. Or, une grande majorité de la population anglophone habite Montréal et ses banlieues. Le *projet de loi n° 107* ne règle donc pas le problème d'hétérogénéité linguistique accrue que l'on retrouve dans les écoles des commissions scolaires catholiques et protestantes de Montréal. Il risque de créer un nouveau lieu de regroupement de la minorité anglophone en superposant une commission scolaire anglophone aux commissions confessionnelles protégées. Dans les villes de Québec et de Montréal, la minorité anglophone serait alors répartie entre la commission scolaire protestante, la commission scolaire catholique et la nouvelle commission scolaire anglophone.

Le *projet de loi n° 107* est, selon le vœu du gouvernement du Québec, soumis à la cour d'appel du Québec²² pour qu'elle en évalue la constitutionnalité quant au respect des droits confessionnels conférés par l'article 93. Les limites du territoire des commissions scolaires des villes de Québec et de Montréal soulève un doute : doivent-elles correspondre à celles de 1867 ou aux limites actuelles ? De plus, les commissions scolaires protestantes autres que les cinq commissions dissidentes de 1867 estiment que leur existence est due au droit à la dissidence exercé selon l'article 93. Si tel est le cas, un amendement à l'article 93 de la *Loi constitutionnelle de 1867* serait nécessaire pour établir des commissions scolaires linguistiques au Québec, ou encore partout où les droits confessionnels sont entérinés au Canada²³.

La mise en application éventuelle de certaines clauses du *projet de loi n° 107* peut cependant prendre jusqu'à cinq ans puisque la Cour suprême du Canada sera sûrement appelée à se prononcer sur leur constitutionnalité. Ce délai risque d'accentuer l'inquiétude de la minorité de langue anglaise du Québec²⁴. Par ailleurs, la tentative d'une plus grande autonomie locale peut constituer un palier décisionnel important pour la minorité de langue officielle.

5. Service de la vie étudiante	C a l.	6. Service des relations-école-milieu	C a l.	7. Service aux activités complémentaires	C a l.	8. Service de la programmation	C a l.	9. Service de l'évaluation et de la recherche	C a l.
Consultation et animation	DR DL	Comité de parents Comité d'école École communautaire	L L L	Bibliothèque Audiovisuel Ordinateurs et informatique	DR/DL DR/DL DR/DL	Élaboration de programmes Évaluation de l'école Évaluation du matériel didactique Évaluation des programmes	R P RP	Évaluation du rendement des étudiants Évaluation du système scolaire Évaluation des enseignants	RP DR DP
• orientation • psychologie • information scolaire • service de santé • pastorale • activités étudiantes	DL DL	Comité conjoint scolaire municipal							
Fréquentation scolaire	DR	Comité d'orientation	L				RP	Recherche	
• admission • présences	DL					Formation pédagogique Personnel du ministère	P		
Surveillance	DR								
Transport scolaire	DR								
• contrats • transferts									
Cafétéria									
Prêts et bourses									
Règles de conduite à l'école	DR DL								
Résidences									

*Catégories de pouvoir : Voir la légende du tableau IV-4.

Tableau IV-20

Modèle de gestion scolaire proposé – Commission scolaire linguistique du Québec (1988)

1. Service de l'enseignement	C* a t.	2. Service des finances et administration générale	C a t.	3. Service du personnel	C a t.	4. Service de l'équipement	C a t.
Enseignement préscolaire	DR/DL	Administration du service	DR	Administration du service	DR	Administration du service	DR
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux		Budget	DR	Organisation du travail	DR	Approvisionnement	DR
		Contrôle interne	DR	Recrutement et sélection	DR	Carionnage	DR
		Contrôle externe	DP			Entretien et réparation	DR
		Paye	DR	Affectation et rémunération	DR	– bâtiments, terrains	
Enseignement élémentaire	DR/DL	Perception des revenus	DR/DP	Évaluation		Entretien ménage	DR
• régulier							
• entente inadaptée/doute							
Enseignement secondaire	DR/DL	Conseils des commissaires et de direction [élection et (ou) nomination]	DR/DL	Accréditation (provinciale)	DP	Consommation énergétique	DR
• régulier						– chauffage, électricité	
– matières des programmes		Direction générale	DR	Perfectionnement professionnel	DR	Location/construction d'immeubles	DR
• professionnel		Secrétariat général	DR	Développement organisationnel	DR/DP	Protection et sécurité	DR
– ateliers		Service de la dette	DR			– assurance, surveillance	
– tronç commun		Orientation des projets éducatifs	DR/DL			Transfert scolaire et municipal	DR
• adolescence inadaptée/doute	DR	Politiques	DR			– échanges de services	
• groupes d'étudiants spéciaux	DR	Informatique	DR			Communication électronique	DR
Classes d'accueil						– téléphone, interphone	
Éducation permanente	DR						

mais fournit les services complémentaires à la minorité confessionnelle. Ses autres fonctions sont réparties selon les ressources humaines, les ressources matérielles et le transport. En général, la loi confère des fonctions et non des pouvoirs aux commissions scolaires. Ces dernières sont sous la coupe d'un palier décisionnel provincial puissant; elles sont en quelque sorte un mécanisme d'application et non un système autonome. Le tableau IV-20 fait état du partage décisionnel entre les paliers régional et provincial auxquels sont soumises les commissions scolaires. Ainsi, les services sont souvent assujettis à la fois à une décision régionale (DR) et une décision provinciale (DP).

Sur le plan local, la loi place l'école sous la direction pédagogique et administrative du directeur de l'école. La commission scolaire doit instituer, tous les ans, un conseil d'orientation pour chaque école. Ce conseil est majoritairement composé de parents; il inclut un minimum de deux enseignants, un représentant du personnel non enseignant, deux élèves de second cycle du secondaire (10^e et 11^e années) et le directeur de l'école. Ce dernier n'a pas droit de vote.

Même s'il est plutôt un lieu de concertation et de coordination entre les partenaires de l'école, le comité d'orientation peut exécuter toutes les fonctions que la commission scolaire veut lui déléguer. En général, il a plus de pouvoirs qu'un comité consultatif. Ses tâches décisionnelles sont indiquées par le code (DL) au tableau IV-20. Il favorise les échanges et réglemente la conduite des élèves et des usagers de l'école. Il approuve le choix des activités éducatives non comprises dans les programmes d'études. Il donne son avis à la direction de l'école sur les orientations propres à l'école contenues dans le projet éducatif.

Le comité d'orientation conseille la commission scolaire ou lui fait des recommandations sur les questions suivantes :

- la reconnaissance confessionnelle de l'école;
- les modalités d'application du régime pédagogique correspondant à l'ensemble des exigences pédagogiques établies par le ministère;
- l'enrichissement ou l'adaptation des programmes d'études officiels;
- l'organisation des manuels scolaires et du matériel didactique;
- l'organisation, dans les locaux de l'école, des services sportifs, socio-culturels ou de garde.

L'établissement de comités d'orientation n'exclut pas la formation d'un comité d'école qui, lui, donne son avis au comité d'orientation.

Le modèle des commissions scolaires linguistiques du Québec répond aux objectifs et aux principes élaborés pour l'épanouissement de la minorité. Il lui accorde tous les pouvoirs de gestion que possède la majorité. Il a également le mérite suivant : il tente d'instituer une plus grande autonomie locale et y favorise la mise en pratique d'un plus grand pouvoir décisionnel.

C'est à partir de ces événements que le gouvernement du Québec rédige un nouveau projet de loi qui est adopté à l'Assemblée nationale en décembre 1988 : le projet de loi n° 107, *Loi sur l'instruction publique*. Bien qu'il soit moins audacieux que le projet de loi n° 40, ce projet ramène les deux mêmes préoccupations : 1) des structures pour accommoder les deux groupes linguistiques et 2) un projet de participation locale accrue. D'ailleurs, le gouvernement annonce ainsi son intention :

Il (le projet de loi n° 107) vise principalement à donner à l'école une plus grande autonomie juridique sans briser les liens organiques qui l'unissent à la commission scolaire et au réseau des écoles de la commission scolaire. Il reconnaît à l'école et à ses agents une meilleure participation dans l'élaboration des décisions de la commission scolaire. [...]

Le projet de loi prévoit la division, par décret du gouvernement, du territoire du Québec en territoires de commissions scolaires francophones et en territoires de commissions scolaires anglophones ayant compétence sur l'éducation préscolaire, l'enseignement primaire ou l'enseignement secondaire. (p. 2-3)

Une double carte scolaire réorganise les commissions scolaires en fonction du caractère linguistique. Il en est autrement des commissions scolaires protégées par l'article 93. Le statut confessionnel est maintenu dans le cas des commissions scolaires catholiques et protestantes des villes de Québec et de Montréal, des commissions scolaires dissidentes protestantes²⁰ et des commissions scolaires dissidentes protestantes²¹.

En vertu du projet de loi n° 107, la commission scolaire offre des services que surveille et dirige le ministre de l'Éducation. Le conseil des commissaires est composé de membres élus par les contribuables, d'un représentant élu du comité de parents pour les services au primaire et d'un autre pour les services au secondaire. Ses fonctions générales sont :

- de s'assurer que les personnes relevant de sa compétence reçoivent les services éducatifs auxquels elles ont droit;
- d'être responsable des services éducatifs aux adultes;
- de déterminer tous les trois ans un plan de répartition de ses immeubles;
- de consulter les conseils d'orientation et les comités de parents;
- de conclure des ententes avec d'autres commissions scolaires ou organismes pour la prestation de services (personnes handicapées, prématernelle, éducation des adultes, primaire, secondaire, services professionnels ou autres).

Au chapitre des fonctions reliées aux services éducatifs (de l'enseignement), la commission scolaire s'assure de l'application du régime pédagogique établi par le gouvernement. Elle veille ainsi à ce que soient enseignées les matières obligatoires des programmes d'études du ministère. Elle confère à ses écoles le statut confessionnel de la majorité de ses élèves

Même s'il répond aux principes et aux objectifs de la gestion par la minorité, ce modèle pose deux problèmes. D'une part, le processus électoral doit être rodé et les instances municipales et provinciales doivent faciliter, et même promouvoir, le choix d'adhésion au système de langue française. Sans cette émulation, le système français risque de ne regrouper qu'une partie de la population et de faire face aux difficultés d'un financement inférieur provenant des taxes. Le système de financement doit être repensé pour assurer l'égalité d'accès aux ressources et aux services. D'autre part, le regroupement minoritaire confère un pouvoir décisionnel au palier régional de décision mais ne met pas en œuvre un mécanisme autre que celui de la consultation locale par des comités consultatifs. Aucune responsabilité décisionnelle n'est accordée à la communauté locale.

c. Québec : Les commissions scolaires linguistiques (1988)

Historiquement, le système scolaire du Québec est organisé en fonction de critères confessionnels. Tout le territoire est découpé selon une double carte scolaire de commissions scolaires catholiques (201), protestantes (29) et multi-confessionnelles¹⁹ (4). Il appert que la minorité anglophone a géré, de fait, une bonne partie de ses établissements scolaires. Depuis 1983, divers projets de loi du gouvernement du Québec visent à établir une concordance entre la loi et les besoins de la minorité anglophone.

Le projet de loi n° 40, déposé en 1983 devant l'Assemblée nationale et retiré par la suite, est un audacieux projet fondé sur le *Livre blanc* intitulé *Une école communautaire et responsable* (1982). Il donne la primauté à l'école et en fait un palier de pouvoir décisionnel sur les questions éducatives et pédagogiques, la gestion des ressources financières, matérielles et humaines. En matière d'éducation, il donne suite à la volonté de participation locale accrue, dont tenait déjà compte le projet de loi n° 71 qui, en 1979, avait établi les « conseils d'orientation ». Rappelons que ces conseils n'ont cependant pas été implantés alors en raison de l'opposition des commissions scolaires.

Le projet de loi n° 40 va beaucoup plus loin et fait de l'école une entité juridique. La commission scolaire, pour sa part, est une corporative de services qui détermine le caractère confessionnel de ses écoles. Ainsi, le projet de loi déplace le processus décisionnel vers le palier local. Le regroupement territorial de la commission scolaire s'effectue en fonction du caractère linguistique, sauf à Montréal, à Québec, à Greenfield, à Portage-du-Fort, à Baie-ComEAU, à Laurentienne et à Rouen; les commissions scolaires de ces régions sont toutes protégées par les dispositions de l'article 93 de la *Loi constitutionnelle de 1867*.

En décembre 1984, le projet de loi n° 3 est adopté par l'Assemblée nationale. Il organise toujours le système d'éducation à partir de commissions scolaires linguistiques, francophones ou anglophones, et déplace le seuil décisionnel vers le conseil de commissaires tout en innovant : le tiers des sièges du conseil est occupé par des parents mandats par leur conseil d'école. Le projet de loi n° 3 est déclaré inconstitutionnel par la cour d'appel du Québec en 1985 parce qu'il contrevient aux dispositions de l'article 93 de la *Loi constitutionnelle de 1867*, ne protégeant pas les droits confessionnels acquis en 1867.

5. Service de la vie étudiante	C a l.	6. Service des relations- école-milieu	C a l.	7. Service aux activités complémentaires	C a l.	8. Service de la programmation	C a l.	9. Service de l'évaluation et de la recherche	C a l.
Consultation et animation	RS	Comité de parents	RS	Bibliothèque	RS	Élaboration de programmes	RS	Évaluation du rendement des étudiants	RS
• orientation	RS	Comité d'école		Audiovisuel	RS	Évaluation de l'école	RS	Évaluation du système scolaire	
• psychologie	RS	École communautaire		Ordinateurs et informatique	RS	Évaluation du matériel didactique	RS	Évaluation des enseignants	RS
• information scolaire		Comité conjoint scolaire municipal				Évaluation des programmes	RS	Recherche	
• service de santé						Formation pédagogique			
• pastorale						Personnel du ministère			
• activités étudiantes									
Fréquentation scolaire	RS	Comités consultatifs	RS						
• admission									
• présences									
Surveillance	RS								
Transport scolaire									
• contrats									
• transferts									
Cafétéria	RS								
Prêts et bourses									
Résidences									

*Catégories de pouvoirs :
 RS : Régional (sections).
 RC : Régional (conseil plénier).

Tableau IV-19

Modèle de gestion scolaire en vigueur – Parallèle à la structure majoritaire : Conseil scolaire linguistique d'Ottawa-Carleton (1988)

1. Service de l'enseignement	C ^a a l.	2. Service des finances et administration générale	C ^a a l.	3. Service du personnel	C ^a a l.	4. Service de l'équipement	C ^a a l.
Enseignement préscolaire	RS	Administration du service	RS/RC	Administration du service	RS	Administration du service	RC
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux		Budget		Organisation du travail	RS	Approvisionnement	
		Contrôle interne	RC	Recrutement et sélection	RS	Camionnage	
		Contrôle externe	RS			Entretien et réparation	RC
Enseignement élémentaire	RS	Paye	RS	Affectation et rémunération	RS	– bâtiments, terrains	
• régulier		Perception des revenus	RS	Évaluation		Entretien ménager	RS
• enfance inadaptée/douée		Conseils des commissaires et de direction [élection et (ou) nomination]	RS/RC	Accréditation (provinciale)	RS	Consommation énergétique	RS
Enseignement secondaire	RS					– chauffage, électricité	
• régulier				Perfectionnement professionnel	RS	Location/construction d'immeubles	RS/RC
– matières des programmes		Direction générale	RS/RC	Développement organisationnel		Protection et sécurité	
• professionnel	RS	Secrétariat général	RS			– assurance, surveillance	RC
– ateliers		Service de la dette				Transfert scolaire et municipal	
• adolescence inadaptée/douée		Orientation des projets éducatifs				– échanges de services	
• groupes d'étudiants	RS	Politiques				Communication électronique	
• groupes d'étudiants	RS	Informatique				– téléphone, interphone	
Classes d'accueil	RS						
Éducation permanente							

du *projet de loi n° 75* de l'Ontario; il l'applique au système confessionnel afin de tenter de satisfaire aux droits confessionnels énoncés par l'article 93 de la *Loi constitutionnelle* de 1867. Le conseil de la section publique est composé de huit membres et celui de la section catholique, de 14 membres élus parmi les contribuables déclarés francophones et répondant aux exigences suivantes :

- propriétaire ou locataire d'un terrain de la région, ou conjoint de propriétaire ou locataire;
- recensé comme francophone;
- ayant choisi de voter exclusivement pour la section publique ou catholique.

(*Projet de loi n° 109*, p. 31)

Les sections catholique et publique se regroupent en un Conseil plénier pour prendre certaines décisions et offrir certains services. Ce conseil possède tous les pouvoirs et accomplit toutes les fonctions que la *Loi sur l'éducation* confie ou impose à une commission scolaire à l'exception, bien sûr, de celles qui sont de la compétence exclusive des sections. Depuis janvier 1989, les sections gèrent exclusivement les questions relatives aux écoles et aux classes publiques (environ 6 000 élèves) ou catholiques (environ 1 550 élèves). Leurs compétences sont plus étendues que celles des sections de langue minoritaire du modèle de la représentation proportionnelle et garantie. Le tableau IV-19 en donne les détails tels que décrits dans le *projet de loi n° 109*. Nous décrivons ce modèle en distinguant les pouvoirs des sections (RS) et les pouvoirs du comité plénier (RC) composé des membres des deux sections.

Les sections sont exclusivement tribuaires des pouvoirs touchant tous les services à l'exception de deux : l'administration générale et l'équipement. En effet, le conseil scolaire est propriétaire des biens et immeubles qui sont ensuite attribués aux sections. Les deux sections doivent approuver la nomination ou la révocation du directeur général. Le conseil plénier embauche la direction générale, le secrétariat du conseil et la trésorerie. Toute compétence non mentionnée dans la loi revient de droit à la section et non au conseil plénier¹⁸.

Le modèle de commission scolaire linguistique d'Ottawa-Carleton est, comme ailleurs, l'aboutissement d'un processus historique. Il a le grand avantage de remettre à la minorité de langue française tous les pouvoirs décisionnels permettant l'épanouissement de la communauté. Nous retrouvons dans ce modèle la logique des « sections » transformée ici pour répondre également aux besoins décisionnels des groupes confessionnels. Le modèle de la représentation proportionnelle est amélioré en ce qu'il donne un pouvoir accru aux sections et indique d'emblée qu'elles sont le principal lieu de gestion en faisant ainsi, à toutes fins pratiques, des commissions scolaires.

Le modèle d'un conseil scolaire linguistique permet le regroupement de la minorité au palier régional, lui accordant ainsi un important pouvoir décisionnel. Toutefois, le modèle de Toronto offre des services à la minorité francophone contribuable du système public. Il évite de régler les difficultés que créent les droits confessionnels : le regroupement de la minorité n'est pas complet puisqu'il ne touche pas les francophones catholiques. De plus, le modèle ne confère pas de pouvoir décisionnel sur le plan local même s'il note le rôle important qu'un conseil scolaire peut jouer dans la communauté. L'établissement de « comités scolaires » est suggéré, mais aucun mécanisme formel n'est encore adopté pour assurer la participation de la communauté et lui déléguer une responsabilité sur le plan local, notamment pour chaque école. Les domaines pour lesquels les parents participeront à des comités consultatifs (programmes d'études et perfectionnement professionnel) ne sont pas nécessairement ceux qui les préoccupent, ni ceux auxquels ils peuvent le mieux contribuer.

b. *Ontario : Le Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton (1988)*

La suggestion de la création d'une commission scolaire francophone pour la région d'Ottawa-Carleton n'est pas nouvelle. En 1977, le *Rapport de la Commission d'étude pour le remaniement d'Ottawa-Carleton*, connu sous le nom de Rapport Mayo, recommandait la création d'une commission scolaire homogène française englobant tous les élèves, de la maternelle à la fin du secondaire. Cette commission serait d'abord catholique; plus tard, une section publique serait également créée. Le gouvernement n'approuve pas l'établissement de ces deux paliers et propose la création de sections anglaise et française au sein de chacune des quatre commissions scolaires existantes¹⁷. En 1982, le *Rapport du comité mixte sur la gestion des écoles élémentaires et secondaires de langue française* suggère lui aussi l'établissement de sections française et anglaise dans les commissions scolaires de la région. Par contre, en 1986, le rapport du Comité d'étude pour l'éducation en langue française d'Ottawa-Carleton recommande, dans une étude détaillée, « que le Conseil scolaire de langue française d'Ottawa-Carleton soit composé de deux secteurs : le secteur des écoles catholiques romaines et le secteur des écoles publiques » (p. 41). C'est en 1988 qu'est adoptée le *projet de loi n° 109* instituant cette commission scolaire. La loi entre en vigueur le 1^{er} janvier 1989.

La situation démographique de la région d'Ottawa-Carleton est particulière; elle regroupe un important bassin de population francophone grâce à la proximité du Québec et au statut d'Ottawa, capitale du Canada. Il existe aujourd'hui cinq commissions scolaires dans la région : quatre de langue anglaise et une de langue française. Cette dernière, appelée le Conseil de langue française d'Ottawa-Carleton, est composée de deux sections : l'une publique, l'autre catholique.

Le modèle de gestion de la minorité de langue officielle établi dans cette région s'inspire de la structure des sections de la représentation proportionnelle et garantie

5. Service de la vie étudiante	C a t.	6. Service des relations- école-milieu	C a t.	7. Service aux activités complémentaires	C a t.	8. Service de la programmation	C a t.	9. Service de l'évaluation et de la recherche	C a t.
Consultation et animation	DR	Comité de parents Comité d'école École communautaire Comité conjoint scolaire municipal		Bibliothèque Audiovisuel Ordinateurs et informatique	DR DR DR	Élaboration de programmes Évaluation de l'école Évaluation du matériel didactique Évaluation des programmes	DR/DP DR DRDP DR/DP	Évaluation du rendement des étudiants Évaluation du système scolaire Évaluation des enseignants Recherche	DR DR DR DR
• orientation • psychologie • information scolaire • service de santé • pastorale • activités étudiantes									
Fréquentation scolaire	DR					Formation pédagogique Personnel du ministère	DR DP		
• admission • présences									
Surveillance	DR								
Transport scolaire	DR								
• contrats • transferts									
Cafétéria									
Prêts et bourses									
Résidences	DR								

*Catégories de pouvoirs : Voir la légende du tableau IV-4.

Tableau IV-18

Modèle de gestion scolaire en vignueur – Parallèle à la structure majoritaire : Conseil scolaire linguistique régional de Toronto (1985)

1. Service de l'enseignement	C* a t.	2. Service des finances et administration générale	C = t.	3. Service du personnel	C a t.	4. Service de l'équipement	C a t.
Enseignement préscolaire	DR	Administration du service	DR	Administration du service	DR	Administration du service	DR
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux		Budget	XP	Organisation du travail	DR	Approvisionnement	DR
		Contrôle interne	DP	Recrutement et sélection	DR	Carionnage	DR
Enseignement élémentaire	DR	Contrôle externe	DR			Entretien et réparation	DR
		Paye	DR	Affectation et rémunération	DR/XP	– bâtiments, terrains	
• régulier		Perception des revenus	XP	Évaluation	DR	Entretien ménager	DR
• enfance inadaptée/douée		Conseils des commissaires et de direction [élection et (ou) nomination]	DR	Accréditation (provinciale)	DP	Consommation énergétique	DR
Enseignement secondaire	DR					– chauffage, électricité	
• régulier						Location/construction d'immeubles	XP
– matières des programmes		Direction générale	DR	Perfectionnement professionnel	DR	Protection et sécurité	DR
• professionnel		Secrétariat général	DR	Développement organisationnel	DR	– assurance, surveillance	
– ateliers		Service de la dette	DR			Transfert scolaire et municipal	DR
– tronc commun		Orientation des projets éducatifs	DR			– échanges de services	
• adolescence inadaptée/douée		Politiques	DR			Communication électronique	DR
• groupes d'étudiants spéciaux (déficients)	XP	Informatique				– téléphone, interphone	
Classes d'accueil	DR						
Éducation permanente	DR						

comité mis sur pied par le ministre de l'Éducation a pour mandat d'élaborer les modalités d'une transition sans heurt au nouveau système. Faisant suite à des consultations, des audiences publiques et au travail de sous-comités, le rapport de ce comité, intitulé *Préparons l'avenir*, fait des recommandations quant au transfert de composantes entre les commissions scolaires existantes et la nouvelle commission scolaire francophone : personnel, installations, services, programmes, relations communautaires et finances.

En vigueur depuis le 1^{er} janvier 1989, le Conseil des écoles françaises fait partie d'une fédération de sept conseils d'éducation, dits de « secteurs », de la région métropolitaine de Toronto; cette dernière se trouve ainsi gérée par une structure unique à deux paliers. Le conseil francophone est composé de neuf conseillers scolaires, par secteurs électoraux, élus par les contribuables francophones appuyant le système scolaire public. À droit de vote :

- tout contribuable au système public;
- tout résident de sa municipalité;
- toute personne ayant choisi de voter uniquement pour le conseil des écoles françaises.

Le Conseil des écoles françaises nomme deux membres au Conseil scolaire de la communauté urbaine du Grand Toronto, le Metropolitan Toronto School Board. Un de ces membres est le président du Conseil des écoles françaises.

Le Conseil scolaire de la communauté urbaine de Toronto est, pour sa part, responsable de l'approbation des budgets de chaque conseil d'éducation de secteur, de la préparation des budgets conjugués, de l'établissement des taux au mille (taxes), du financement et de l'approbation des programmes d'immobilisation ainsi que de l'administration des écoles pour les enfants déficients moyens (p. 18). Quant au Conseil des écoles françaises, il assume les mêmes responsabilités que celles dévolues aux six conseils de l'éducation de secteurs et il détermine la gamme complète des services et des programmes offerts aux élèves de trois écoles homogènes et d'une école secondaire mixte, comptant au total 1 648 élèves en septembre 1988. Les responsabilités et les pouvoirs du Conseil sont détaillés au tableau IV-18.

Afin de maintenir la qualité des services offerts aux élèves de langue française avant janvier 1989, le transfert des écoles et des services se fait par voie d'achat des services pédagogiques, administratifs et communautaires. Le transfert des établissements et du personnel est effectué de la même manière.

Le modèle de gestion instauré dans la ville de Toronto donne les mêmes pouvoirs à la minorité qu'à la majorité. C'est un système décentralisé qui tente de répondre aux besoins divers d'une population hétérogène comme l'est celle de Toronto. En ce sens, il répond à la nécessité de gérer les aspects vitaux pour l'épanouissement de la minorité de langue officielle. Quelques composantes peuvent cependant être litigieuses : l'approbation du budget général, le financement et l'adoption par le Conseil scolaire de la communauté urbaine de Toronto des programmes touchant les immeubles.

L'auteur du rapport conclut donc que devrait être « implantée à l'Île-du-Prince-Édouard le modèle de la double carte scolaire assortie d'une clause prévoyant la possibilité d'un conseil minoritaire dans certaines régions » (p. 31). Le rapport présente ensuite un découpage de la province en trois districts scolaires conçus pour la minorité francophone et suggère qu'un nombre de 25 parents pourrait être requis par la loi pour revendiquer le droit à la gestion.

Cette étude à l'Île-du-Prince-Édouard est intéressante à deux égards. D'une part, elle décrit un processus de consultation et d'information communautaire. D'autre part, elle démontre également qu'un modèle est adaptable à une autre province; en effet, le modèle recommandé reprend celui en vigueur au Nouveau-Brunswick.

4. Les commissions scolaires linguistiques régionales

Dans quatre provinces canadiennes¹⁶, la minorité officielle jouit ou jouira d'une structure de commissions scolaires linguistiques régionales. Nous avons vu le cas du Nouveau-Brunswick qui regroupe la minorité francophone (ou anglophone), selon le nombre, en conseils scolaires régionaux (majoritaires) ou en conseils scolaires minoritaires. Nous avons également vu le cas de l'Île-du-Prince-Édouard où une commission scolaire linguistique (unité n° 5) est instaurée avant 1990.

En Ontario, deux régions jouissent de commissions scolaires linguistiques : Toronto et Ottawa-Carleton. Au Québec, la minorité anglophone, par son choix historique confessionnel, gèreait souvent son système d'éducation. Toutefois, comme nous l'avons vu au Chapitre II, dans nombre de situations, cette gestion lui échappe progressivement à cause de l'hétérogénéité linguistique progressive des regroupements catholiques et protestants. En vertu de l'article 93 de la *Loi constitutionnelle de 1867*, les systèmes scolaires du Québec et de l'Ontario sont devenus confessionnels, d'où la difficulté de répartir le territoire en fonction du caractère linguistique. Dans cette section, nous voyons quels sont les moyens utilisés par l'Ontario (Toronto et Ottawa-Carleton) et le Québec pour résoudre ces difficultés.

a. *Ontario : Le Conseil des écoles françaises de la communauté urbaine de Toronto* (1986) La création d'une commission scolaire linguistique est l'aboutissement logique des programmes en langue française dans le système public du Grand Toronto. Déjà en 1982, le *Rapport du comité mixte sur la gestion des écoles élémentaires et secondaires de langue française* recommandait l'établissement d'une « section » de langue française composée de neuf conseillers chargés de gérer l'instruction à la minorité. En 1986, le *projet de loi n° 75* apporte des modifications à la *Loi sur la municipalité de la communauté urbaine de Toronto* et crée un Conseil des écoles françaises du Grand Toronto. En janvier 1987, un

5. Service de la vie étudiante	C a t.	6. Service des relations-école-milieu	C a t.	7. Service aux activités complémentaires	C a t.	8. Service de la programmation	C a t.	9. Service de l'évaluation et de la recherche	C a t.
Consultation et animation	DP DR	Comité de parents Comité d'école École communautaire Comité conjoint scolaire municipal		Bibliothèque Audiovisuel Ordinateurs et informatique	DR/DP DR/DP DR/DP	Élaboration de programmes Évaluation de l'école Évaluation du matériel didactique Évaluation des programmes	DP DR/DP DR/DP DR/DP	Évaluation du rendement des étudiants Évaluation du système scolaire Évaluation des enseignants Recherche	DR/DP DR/DP DR/DP DR/DP
<ul style="list-style-type: none"> • orientation • psychiologie • information scolaire • service de santé • pastorale • activités étudiantes 									
Fréquentation scolaire									
<ul style="list-style-type: none"> • admission • présences 	DR DR					Formation pédagogique Personnel du ministère	DP		
Surveillance	DR								
Transport scolaire									
<ul style="list-style-type: none"> • contrats • transferts 									
Cafétéria	DR/DP								
Prêts et bourses									
Résidences	DR/DP								

*Catégories de pouvoirs : Voir la légende du tableau IV-4.

Tableau IV-17

Modèle de gestion scolaire en vigueur – Parallèle à la structure majoritaire :
Conseil scolaire minoritaire et Conseil scolaire linguistique régional du Nouveau-Brunswick (1981)

1. Service de l'enseignement	C* a t.	2. Service des finances et administration générale	C a t.	3. Personnel	C a t.	4. Service de l'équipement	C a t.
Enseignement préscolaire	DR	Administration du service	DR	Administration du service	DR/DP	Administration du service	DR/DP
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux		Budget	DR/DP	Organisation du travail	DR	Approvisionnement	DR
		Contrôle interne	DR	Recrutement et sélection	DR	Carionnage	
		Contrôle externe	DP			Entretien et réparation	DR
Enseignement élémentaire	DR	Paye	DP	Affectation et rémunération	DR/DP	– bâtiments, terrains	
• régulier		Perception des revenus	DP	Évaluation		Entretien ménager	
• enfance inadaptee/douée		Conseils des commissaires et de direction [élection et (ou) nomination]	DR	Accréditation (provinciale)	DP	Consommation énergétique	
Enseignement secondaire	DR					– chauffage, électricité	
• régulier						Location/construction d'immeubles	DR/DP
– matières des programmes		Direction générale	DR	Perfectionnement professionnel	DP	Protection et sécurité	
• professionnel		Secrétariat général	DR	Développement organisationnel	DR/DP	– assurance, surveillance	
– ateliers		Service de la dette	DP			Transfert scolaire et municipal	DP
– tronc commun		Orientation des projets éducatifs	DP			– échanges de services	
• adolescence inadaptee/douée	DR	Politiques	DR/DP			Communication électronique	DR
• groupes d'étudiants spéciaux	DR	Informatique				– téléphone, interphone	
Classes d'accueil	DR						
Éducation permanente							

réside surtout dans sa structure provinciale égalitaire : palier décisionnel qu'il doit maintenir car sans lui le modèle pourrait être remis en question.

De plus, la minorité francophone se dit satisfaite du régime en vigueur. Elle est fière de participer à un système parallèle à celui de la majorité de la province. Les parents notent de meilleurs résultats académiques chez leurs enfants et une plus grande participation de la collectivité dans les affaires de l'école. Enfin, la coopération avec les conseils scolaires environnants quant aux achats de services est satisfaisante.

b. *Ile-du-Prince-Edouard (1987)*

Avant 1990, la loi scolaire de l'Ile-du-Prince-Edouard prévoyait que, lorsque les élèves francophones étaient en majorité dans une région administrative, l'éducation était dispensée en français. C'était effectivement le cas pour l'unité n° 5 (Evangeline) dans le comté de Prince

Faisant suite aux demandes de la Société Saint-Thomas d'Aquin, un rapport intitulé *La gestion scolaire en milieu minoritaire francophone à l'Ile-du-Prince-Edouard* a été présenté en octobre 1987 (Arsenault). Il fait état de rencontres d'information, des résultats d'un sondage et propose un modèle de gestion scolaire pour les francophones de l'Ile-du-Prince-Edouard. Nous en présentons ici les grandes lignes. Quoique ce modèle n'ait pas été adopté, le processus qu'il a suscité est intéressant.

Le rapport décrit les quatre types de modèles de gestion scolaire ayant fait l'objet de sessions d'information auprès des communautés francophones de l'Ile. Ce sont :

- la double carte scolaire du Nouveau-Brunswick et des systèmes provinciaux confessionnels;
- la représentation proportionnelle et garantie de l'Ontario;
- le conseil scolaire minoritaire du Nouveau-Brunswick;
- la commission scolaire provinciale de la Saskatchewan de 1984.

Un sondage effectué par la suite auprès des participants aux sessions d'information indique les choix suivants :

- 80 p. 100 des répondants recommandent le modèle de la double carte scolaire estimant qu'il s'agit du modèle le plus susceptible de répondre aux besoins de la minorité francophone de l'Ile;
- 73 p. 100 ne recommandent pas le modèle de la représentation proportionnelle et garantie;
- 60 p. 100 recommandent le modèle du conseil scolaire minoritaire;
- la majorité des répondants ne recommande pas le modèle de la commission scolaire provinciale.

comporte trois divisions, dont deux linguistiques (soit une division responsable, sous la supervision d'un sous-ministre francophone, des services aux francophones et une division, similairement constituée, chargée de l'éducation anglophone¹⁴). Une troisième division, soit celle de l'administration et des finances, traite des services financiers communs à tous les conseils scolaires¹⁵.

L'évaluation du modèle du conseil scolaire linguistique régional et du conseil scolaire minoritaire doit tenir compte d'un facteur de grande importance : le contexte de la province où ce modèle est mis en vigueur. Avec sa tendance à la centralisation, le système du Nouveau-Brunswick doit prévoir une forte représentation de la minorité auprès du ministre de l'Éducation. Sans un pouvoir de décision à ce palier, tous les éléments essentiels à l'épanouissement de la minorité lui échappent.

Le modèle du Nouveau-Brunswick respecte la nécessité d'un regroupement homogène de la minorité. La double carte scolaire s'en porte garante. Le regroupement à chaque palier décisionnel est également respecté et un conseil minoritaire a de plus l'avantage d'être adapté à une faible clientèle. Le palier provincial offre une structure parallèle aux deux groupes linguistiques et le palier régional conserve l'autonomie décisionnelle dans l'administration de l'éducation. Toutefois, les paliers régional et local sont confondus puisqu'aucune disposition ne requiert la formation obligatoire de comités de parents ou d'école. C'est sûrement la une faiblesse du système, faiblesse dont l'importance dépend, outre de l'étendue du territoire, du nombre d'écoles administrées par chaque conseil scolaire.

Par ailleurs, dans le cas des conseils scolaires régionaux majoritaires, il faudra établir le principe de la dualité linguistique permettant l'égalité de traitement qui favorise la modification d'une situation historique à réformer.

Le principal inconvénient du modèle du Nouveau-Brunswick tient à la structure « minorisante » des conseils scolaires minoritaires. Il s'agissait d'une mesure transitoire, comme l'étaient les comités consultatifs, mais nous en relevons tout de même les défauts. Les membres ne sont pas élus et leur nombre est restreint. La formule ne garantissait pas l'égalité de traitement au groupe plus faible. De plus, là où on retrouvait moins de 30 parents d'enfants en âge de fréquenter l'élémentaire (le secondaire étant exclu), le groupe minoritaire était restreint aux comités consultatifs tels que ceux décrits par un amendement apporté en décembre 1983 à la loi scolaire. En effet, le ministre pouvait instituer un comité consultatif de trois à cinq membres, là où 10 p. 100 du nombre total d'enfants inscrits ou dix parents d'enfants en faisaient la demande. La structure scolaire n'était donc pas complètement équitable. C'est pourquoi depuis l'*Arrêté ministériel* de 1985, chaque groupe linguistique appartient à un conseil scolaire régulier, à l'exception du district minoritaire n° 54 d'Edmundston.

De façon générale donc, le modèle de gestion du Nouveau-Brunswick vise l'épanouissement de la minorité francophone. On peut l'estimer efficace dans la mesure où il contribue au maintien du plus bas taux d'assimilation des francophones en milieu minoritaire. Sa force

ministre, soit dans un délai de six mois dans les conditions suivantes :

lorsque des parents (i) qui résident dans ce district scolaire (ii) dont la langue est une langue officielle qui n'est pas la langue officielle [selon] laquelle le district scolaire est organisé, et (iii) qui sont les parents d'au moins 30 enfants d'âge scolaire au niveau élémentaire lui présentent [au ministre] une requête conformément aux règlements [...].

La constitution d'un conseil scolaire minoritaire peut précéder ou suivre l'établissement d'une école. Trois conseils minoritaires d'expression française (Fredrickton, Newcastle et Saint-Jean) et un d'expression anglaise (Edmundston) ont été créés. Depuis 1985, un seul demeure, soit celui du district n° 54 pour la minorité anglophone de la région d'Edmundston. Les trois autres sont devenus des conseils scolaires ordinaires.

Consacrions quand même quelques lignes aux particularités des conseils scolaires minoritaires car ils constituent un modèle important dans l'histoire de la gestion minoritaire. Le nombre de conseillers, déterminé par le ministre, varie de trois à cinq. Ils sont nommés par le ministre avec l'approbation du lieutenant-gouverneur en conseil et siègent pour une période de trois ans. Dans le fonctionnement et l'administration des écoles relevant de leur compétence, les conseils scolaires minoritaires ont les mêmes responsabilités et la même autorité que les conseils scolaires réguliers. Cependant, étant donné le peu d'élèves inscrits, certains de ces conseils scolaires ne peuvent offrir tous les services éducatifs et administratifs du district majoritaire. Par conséquent, le conseil minoritaire peut, et parfois doit, procéder à des ententes avec d'autres conseils scolaires. Le transport des élèves en est un exemple. De plus, les fonctions d'administration et de supervision du conseil, tels les services d'ordre pédagogique, peuvent être remplies par le personnel régional du ministre de l'Éducation.

Par l'entremise des conseils scolaires, le modèle du Nouveau-Brunswick accorde une autonomie complète aux deux groupes linguistiques sur le plan régional. Toutefois, ce système d'éducation est plus centralisé que celui des provinces des Prairies, de l'Ontario ou même du Québec. Le ministre délègue peu des pouvoirs qui lui sont traditionnellement dévolus. La répartition de ces pouvoirs est présentée au tableau IV-17; on remarque qu'ils sont souvent partagés et que la province conserve le pouvoir décisionnel final. À titre d'exemple, mentionnons que tous les biens appartenant légalement à la province et que les conseils scolaires doivent en fournir un inventaire détaillé. Le ministre peut transférer du matériel d'un district scolaire à un autre. Les budgets sont approuvés par le ministre qui répartit tous les fonds; sauf exception, les conseils scolaires n'ont pas de droit de taxation. La province décide de l'emplacement, de la location ou de la construction des écoles. La rémunération du personnel enseignant et administratif est négociée à l'échelle de la province avec le ministre de l'Éducation et le service de la paye y est localisé.

Bien que ce système confère à la minorité officielle un droit de gestion égal à celui de la majorité au palier provincial, il pourrait être inefficace si le ministre de l'Éducation ne fournissait pas de structure double. Or, dans le cas du Nouveau-Brunswick, le ministre

a. *Nouveau-Brunswick (1981)*

Au Nouveau-Brunswick, la consolidation des multiples unités scolaires (422) en 33 districts fusionnés, qui a eu lieu en 1966, a eu pour effet en certains endroits de noyer les francophones dans les nouvelles structures de gestion à prédominance anglophone. La demande d'écoles homogènes dans les régions « bilingues » a donc pris de l'ampleur car un article de la *Loi sur les langues officielles* (1973), promulgué en 1976, vise la dualité linguistique en matière d'instruction en déclarant que « lorsque le français est la langue maternelle des élèves, le français doit être la principale langue d'enseignement et l'anglais doit être la langue seconde » [alinéa 12(b) c)]. Cependant, cette même loi justifie l'établissement d'écoles bilingues : lorsque la langue maternelle d'une partie des élèves est l'anglais et l'autre le français, la même école peut dispenser des cours à chaque groupe dans sa langue maternelle.

Dans cette conjoncture, le *Rapport du comité sur l'organisation et les frontières des districts scolaires du Nouveau-Brunswick* recommande, en 1979, :

Que tous les districts scolaires soient établis [en fonction de critères] linguistiques, c'est-à-dire en districts d'expression française ou en districts d'expression anglaise, et que ce principe soit clairement énoncé dans la loi scolaire. (p. 59)

Ainsi, en 1981, la loi scolaire est amendée pour organiser les districts scolaires, les écoles et les classes en fonction de l'une des langues officielles du Nouveau-Brunswick. Dans le système de gestion, cette organisation signifie une double carte scolaire, des conseils scolaires majoritaires et des conseils scolaires minoritaires. Nous expliquons maintenant en quoi consiste ces organismes.

Les conseils scolaires étant répartis sur une double carte scolaire, le territoire de la province est découpé une première fois pour le groupe francophone et une deuxième fois pour le groupe anglophone. Bien que les frontières scolaires soient souvent semblables sur les deux cartes, elles se chevauchent à l'occasion : un district francophone peut recouper le territoire d'un district anglophone. Lorsque la majorité d'une région géographique est de langue maternelle anglaise, la minorité de langue maternelle française a droit à l'établissement d'un district scolaire dit minoritaire.

Actuellement, au Nouveau-Brunswick, on compte 15 conseils scolaires majoritaires d'expression française et 24 conseils scolaires majoritaires d'expression anglaise. Les conseils scolaires francophones et anglophones ont les mêmes pouvoirs et responsabilités. Le conseil est composé de 7, 9 ou 11 membres, tel que déterminé par le lieutenant-gouverneur en conseil. Les conseillers sont élus à l'intérieur des districts divisés en sous-districts électoraux et siègent pour une période de trois ans. Les résidents doivent déclarer à quel groupe linguistique ils désirent appartenir.

Dans les régions où un groupe linguistique est trop petit, des conseils scolaires minoritaires sont établis conformément à l'article 18.1 (1) de la loi scolaire, soit sur l'initiative du

5. Service de la vie étudiante	C a t.	6. Service des relations-école-milieu	C a t.	7. Service aux activités complémentaires	C a t.	8. Service de la programmation	C a t.	9. Service de l'évaluation et de la recherche	C a t.
Consultation et animation		Comité de parents	DL	Bibliothèque	DL/DP	Élaboration de programmes	DL/DP	Évaluation du rendement des étudiants	
• orientation	DP	Comité d'école	DL	Audiovisuel		Évaluation de l'école		Évaluation du système scolaire	DP
• psychologie		École communautaire		Ordinateurs et informatique		Évaluation du matériel didactique	DP	Évaluation des enseignants	DL/DP
• information scolaire		Comité conjoint scolaire municipal				Évaluation des programmes	DL/DP	Recherche	
• service de santé						Formation pédagogique			
• pérorale						Personnel du ministère			
• activités étudiantes									
Fréquentation scolaire									
• admission	DL								
• présences	DL								
Surveillance									
Transport scolaire	DL								
• contrats									
• transferts									
Cafétéria									
Prêts et bourses									
Résidences									

*Catégories de pouvoirs : Voir la légende du tableau IV-4.

Tableau IV-16

Modèle de gestion scolaire proposé – Commissions scolaires locales assorties d'un Conseil général provincial, Saskatchewan (1989)

1. Service de l'enseignement	C ^a a l.	2. Service des finances et administration générale	C ^a a l.	3. Service du personnel	C ^a a l.	4. Service de l'équipement	C ^a a l.
Enseignement préscolaire	DL	Administration du service	DL/DP	Administration du service		Administration du service	
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux		Budget	DL/DP	Organisation du travail	DL	Approvisionnement	
		Contrôle interne		Recrutement et sélection	DL	Carionnage	
		Contrôle externe				Entretien et réparation	
Enseignement élémentaire	DL	Paye		Affectation et rémunération	DL	– bâtiments, terrains	
• régulier		Perception des revenus	DP	Évaluation		Entretien ménager	
• entrée inadaptée/douée		Conseils des commissaires et de direction [élection et (ou) nomination]	DL/DP	Accréditation (provinciale)	DL/DP	Consommation énergétique	
Enseignement secondaire	DL	Direction générale	DP	Perfectionnement professionnel	DL	– chauffage, électricité	
• régulier		Secrétariat général	DP	Développement organisationnel		Location/construction d'immeubles	DL/DP
– matières des programmes		Service de la dette				Protection et sécurité	
• professionnel		Orientation des projets éducatifs	DL/DP			– assurance, surveillance	
– autres		Politiques				Transfert scolaire et municipal	
• adolescence inadaptée/douée	DL	Informatique				– échanges de services	
• groupes d'étudiants spéciaux	DL					Communication électronique	
Classes d'accueil	DL					– téléphone, interphone	
Éducation permanente							

En déclarant d'emblée l'égalité des droits et des pouvoirs entre le système de gestion scolaire transaskois et le système majoritaire, la minorité obtient le moyen de prendre les décisions vitales à son épanouissement. Nous supposons donc qu'elle administre tous les éléments essentiels de la gestion scolaire. Cependant, comme l'indique le tableau IV-16, la répartition des pouvoirs et des responsabilités entre les plans local et provincial n'étant pas encore complètement définie, cela peut entraîner des difficultés. Le tableau IV-16 montre également que plusieurs éléments n'ont pas encore été spécifiés. Toutefois, puisque le projet est en voie d'élaboration et fait partie d'un processus de consultation et d'implantation, ces éléments seront sûrement précisés en cours de route.

La question du financement demeure épineuse sans un système de taxation équivalent à celui de la majorité. Par contre, le modèle de gestion proposé tient compte de la nécessité d'un financement équitable et efficace. Le comité a donc proposé des mesures concrètes qui permettront d'atteindre l'équité et l'efficacité.

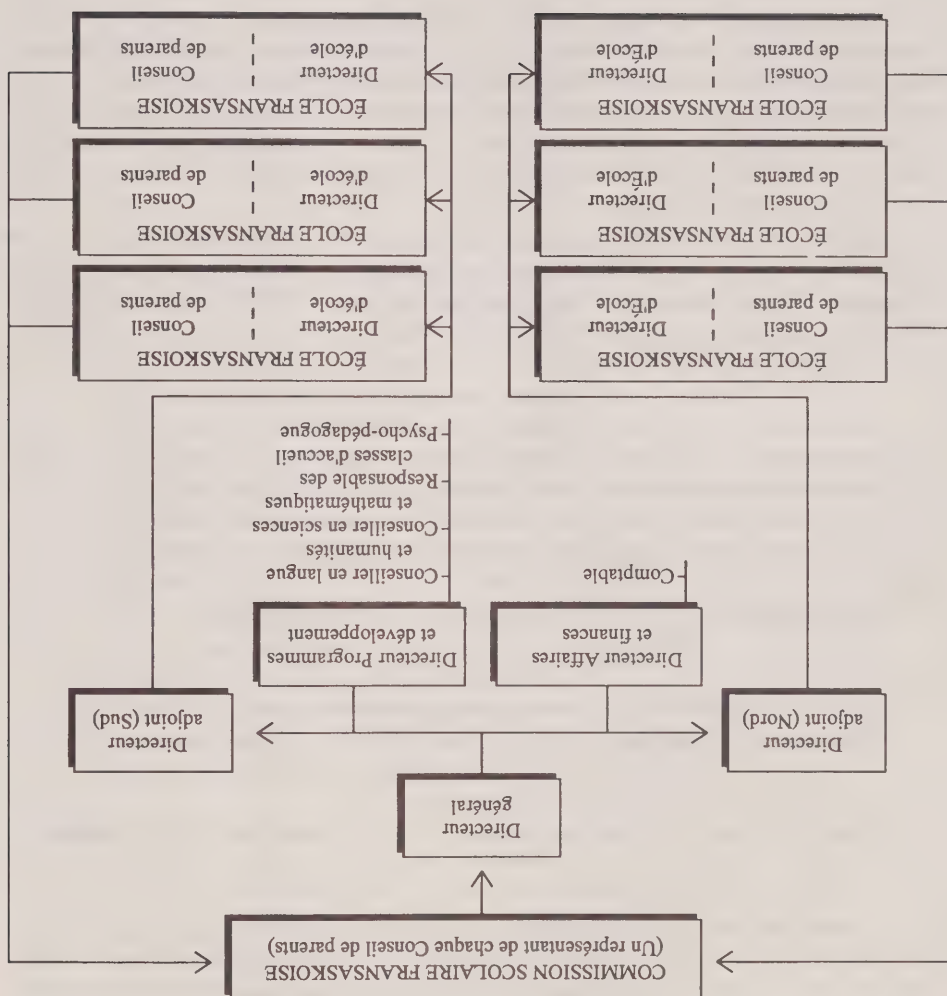
Le regroupement de la minorité sur deux paliers constitue un avantage important dans une province dont le territoire est vaste. Il permet l'homogénéité linguistique nécessaire à l'épanouissement de la minorité. Un désavantage temporaire apparaît cependant au sujet de ce regroupement. L'homogénéité se limitant aux parents et aux enfants, le rôle de l'école dans la communauté risque d'être diminué en pratique. Cependant, ce désavantage pourrait aussi se transformer en avantage puisqu'il permet une implantation graduelle d'un nouveau système, même si cette implantation risque d'être fort complexe dans sa première phase.

Possions-nous maintenant les questions fondamentales. Ce modèle met-il en œuvre les mesures assurant le respect des pleins droits conférés par l'article 23 de la *Charte*? Vise-t-il l'épanouissement de la minorité? Favorise-t-il une action efficace qui fournit à la minorité les moyens d'assurer son épanouissement? Nous pouvons affirmer qu'il s'agit en effet d'un modèle visant l'épanouissement de la minorité et qui lui permet d'agir. Cependant, cette minorité continue de devoir compter sur le gouvernement pour son financement et, donc, se trouve forcée de réagir aux décisions de ce dernier.

Le modèle de système scolaire transaskois jouit de l'appui politique et communautaire que le processus d'élaboration du modèle et l'histoire de ce dossier en Saskatchewan ont favorisé.

3. Le conseil scolaire minoritaire et le conseil scolaire linguistique régional

Nous proposons dans cette section l'étude d'un modèle de gestion mis en vigueur au Nouveau-Brunswick (1981) et proposé pour l'Île-du-Prince-Édouard (1988): le conseil linguistique régional assorti, lorsqu'il y a lieu, d'un conseil scolaire minoritaire. En général, ce modèle institue un régime dualiste pour les populations de langue officielle; il convient d'avantage aux provinces où les droits confessionnels ne sont pas constitutionnalisés.



représentant au conseil général. Le conseil général se dotera d'un personnel permanent :

- un directeur général chargé de l'organisation;
- un secrétaire-trésorier;
- un personnel de soutien;
- des directeurs adjoints pour offrir des services professionnels aux conseils locaux.

Le rapport du comité suggère une liste, non exhaustive, des fonctions de ce conseil :

- allouer les ressources budgétaires aux conseils scolaires;
- offrir une direction destinée à assurer l'intégrité du système fransaskois;
- s'assurer que tous les services offerts à la majorité le sont aussi à la minorité;
- engager le personnel et en diriger le travail;
- négocier le financement avec le ministère de l'Éducation;
- déterminer les besoins de montants spéciaux et établir les priorités à ce sujet;
- déterminer les régions desservies par chaque école fransaskoise;
- informer les organismes compétents des besoins des Fransaskois;
- offrir un soutien aux conseils scolaires locaux dans les domaines suivants :
 - sélection et évaluation des enseignants, évaluation des programmes,
 - services d'éducation spéciaux, élaboration des budgets, orientation
 - psychologique, services de bibliothèque, etc.

Les recommandations du comité portent également sur la structure du ministère de l'Éducation. La nomination d'un sous-ministre adjoint aux affaires francophones est suggérée de même que celle de deux directeurs relevant du sous-ministre adjoint : un pour les services à la minorité, l'autre pour les services en français seconde.

C'est au chapitre des modes de financement que le projet de conseils scolaires fransaskois diffère des commissions scolaires majoritaires. Le financement proviendrait entièrement de sources gouvernementales. Les taxes scolaires levées par les commissions scolaires sont remplacées par un financement directement reçu du gouvernement; ce choix permet de financer un nouveau système d'éducation sans changer le système en vigueur. Ainsi, le financement aux conseils scolaires fransaskois proviendrait surtout de trois sources :

- des paiements par élève équivalents aux taxes perçues par une commission scolaire;
- un octroi de base du ministère de l'Éducation calculé sur les mêmes critères que ceux s'appliquant à n'importe quelle autre commission scolaire;
- un montant spécial destiné à couvrir les besoins supplémentaires de « rattrapage » des écoles francophones. (p. 13)

La structure proposée dans le rapport du Comité de coordination pour le contrôle et la gestion des écoles francophones par les francophones est le résultat de l'évolution de la réflexion historique des Fransaskois concernant la gestion scolaire. En effet, la structure proposée par le comité s'inspire largement des propositions antérieures de la Commission des écoles fransaskoises. Le tableau IV-15 récapitule la structure proposée par cette dernière. La commission scolaire provinciale jouait alors un rôle prépondérant dans l'organigramme, choix qui reposait sur quatre principes directeurs : 1) la sauvegarde de l'identité culturelle, 2) l'intégration d'une collectivité distincte à la majorité, 3) l'autonomie locale et 4) la rentabilité des services. Dans l'ensemble, le modèle était fondé sur une approche centralisée et destinée aux parents qui y jouaient le rôle de décideurs.

Le nouveau modèle proposé en 1989 par le Comité de coordination pour le contrôle et la gestion des écoles repose plutôt sur le palier décisionnel local. En voici les principales recommandations.

Dans une communauté où existe déjà une école française, une commission scolaire locale, appelée Conseil scolaire fransaskois de (ville, village, nom de l'école), serait fondée. Ce conseil est formé de cinq à dix membres, élus le troisième mercredi d'octobre pour une période de trois ans, conformément à l'article 32 de la *Loi sur l'éducation* de la Saskatchewan. Ces membres devront cependant être parents et avoir un enfant inscrit à l'école française; ce critère sera surtout important, selon le comité, lors de l'implantation du système.

Dans le cas des régions et des communautés où il n'existe pas encore d'école française, les parents seront tenus d'exprimer leur choix. À la suite d'une campagne d'information, ils pourront indiquer si « oui » ou « non », ils désirent une école française. Lorsque le vote est positif, « le comité conclut qu'il serait mieux de laisser cette première élection [d'un conseil scolaire local] entièrement aux parents, qui pourront décider qui peut voter et se présenter aux élections ». (*Une composante*, 1989, p. 10)

Au chapitre des pouvoirs et des responsabilités, les conseils fransaskois devraient exercer les mêmes que ceux des commissions scolaires de la province; ces pouvoirs et responsabilités sont décrits dans la *Loi sur l'éducation* aux articles 91 à 95. En particulier, un conseil scolaire fransaskois a comme tâche principale de veiller au fonctionnement de son école française et peut décider, notamment, de son statut confessionnel. Toutefois, un conseil scolaire local peut déléguer certaines responsabilités au Conseil général provincial. Le directeur de l'école joue un rôle semblable à celui d'une direction générale dans une commission scolaire majoritaire; ainsi, le conseil scolaire n'a pas à créer de nouvelle infrastructure administrative.

Sur le plan provincial, le mandat de l'organisme central, le Conseil général des écoles fransaskoises, est de fournir un soutien aux conseils scolaires locaux. Ce conseil général sera composé de deux représentants par école jusqu'à ce qu'il y ait cinq conseils scolaires dans le système. Lorsqu'il y en aura plus de cinq, chaque conseil scolaire nommera un

2. Les commissions scolaires linguistiques locales assorties d'un Conseil général provincial

a. Saskatchewan (1989)

Voici tout d'abord l'origine du modèle de gestion que nous présentons ici : « Une composante du système scolaire de la Saskatchewan au service des Fransaskois » (1989).

En 1984, deux constats mènent la Commission des écoles fransaskoises à présenter le *Projet : Commission scolaire fransaskoise* au ministre de l'Éducation de la Saskatchewan : 1) l'inefficacité des comités consultatifs pour assurer la qualité des services d'instruction à la minorité et 2) la perte de vitesse de la communauté minoritaire causée par l'assimilation. La Commission des écoles fransaskoises¹² présente donc une proposition visant l'établissement d'une commission scolaire francophone.

La ministre de l'Éducation n'accepte pas ce modèle malgré l'existence de systèmes similaires dans le nord de la Saskatchewan¹³. Le modèle fait donc l'objet d'une requête déclaratoire pour son implantation en cour du banc de la reine en 1987 dans l'affaire *Commission des écoles fransaskoises c. R. G. de la Saskatchewan*. Invoquant une question de procédure, le juge Wimmer décide cependant de ne pas se pencher sur la requête; il indique qu'il s'agit là d'un problème du ressort des législatures ou encore d'une question à aborder lors d'un renvoi constitutionnel. Par ailleurs, dans le même jugement, le juge Wimmer reconnaît à la minorité le droit de gérer et de contrôler ses propres écoles.

Le 14 juin 1988, le gouvernement de la Saskatchewan signe avec le gouvernement fédéral une entente destinée à renforcer l'usage du français dans cette province. L'article 3 de cette entente veut que la province consente, en consultation avec la communauté francophone, « à mettre en œuvre un système de gestion et de contrôle des établissements scolaires ». En vertu de cet accord, le ministre de l'Éducation de la Saskatchewan a donc nommé un comité de 21 membres dont le mandat est de recommander un système approprié de contrôle et de gestion. Ce comité, est composé comme suit :

- un président neutre;
- cinq représentants de la communauté fransaskoise;
- cinq représentants du gouvernement provincial;
- cinq représentants de l'organisme regroupant les diverses commissions scolaires et leurs commissaires;
- cinq représentants du secteur professionnel.

Les recommandations faites par le comité dans son rapport de juin 1989, intitulé *Une composante du système scolaire de la Saskatchewan au service des Fransaskois*, ont été acceptées par le ministre de l'Éducation. La mise en œuvre d'un système de gestion pour la minorité de la Saskatchewan est donc en voie d'implantation sous une structure unique de commissions scolaires locales assortie d'un Conseil général provincial.

5. Service de la vie étudiante	Catégorie 1	6. Service des relations-école-milieu	Catégorie 2	7. Service aux activités complémentaires	Catégorie 3	8. Service de la programmation	Catégorie 4	9. Service de l'évaluation et de la recherche	Catégorie 5
Consultation et animation	XP	Comité de parents Comité d'école École communautaire Comité conjoint scolaire municipal		Bibliothèque Audiovisuel Ordinateurs et informatique	XP	Élaboration de programmes Évaluation de l'école Évaluation du matériel didactique Évaluation des programmes		Évaluation du rendement des étudiants Évaluation du système scolaire Évaluation des enseignants	
Fréquentation scolaire								Recherche	
• admission • présences						Formation pédagogique Personnel du ministère			
Surveillance									
Transport scolaire	XP								
• contrats • transferts									
Cafétéria									
Prêts et bourses									
Résidences									

*Catégories de pouvoirs : Voir la légende du tableau IV-4.

Tableau IV-14

Modèle de gestion scolaire en vigueur – Parallèle à la structure majoritaire : Commission scolaire provinciale de l'Île-du-Prince-Édouard (1990)

1. Service de l'enseignement	C ^a l.	2. Service des finances et administration générale	C ^a l.	3. Service du personnel	C ^a l.	4. Service de l'équipement	C ^a l.
Enseignement préscolaire		Administration du service	XP	Administration du service	XP	Administration du service	XP
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux		Budget	XP	Organisation du travail		Approvisionnement	
		Contrôle interne	XP	Recrutement et sélection		Carionnage	
		Contrôle externe	XP			Entretien et réparation	XP
Enseignement élémentaire	XP	Paye		Affectation et rémunération		– bâtiments, terrains	
• régulier		Perception des revenus	X	Évaluation		Entretien ménager	
• entrée inadaptée/douée		Conseils des commissaires et de direction [élection et (ou) nomination]	XP	Accréditation (provinciale)		Consommation énergétique	
Enseignement secondaire	XP					– chauffage, électricité	
• régulier		Direction générale	XP	Perfectionnement professionnel		Location/construction d'immeubles	
– matières des programmes		Secrétariat général		Développement organisationnel		Protection et sécurité	
• professionnel		Service de la dette				– assurance, surveillance	
– ateliers		Orientation des projets éducatifs	XP			Transfert scolaire et municipal	
• adolescence inadaptée/douée		Politiques	XP			– échanges de services	
• groupes d'étudiants spéciaux		Informatique				Communication électronique	
Classes d'accueil						– téléphone, interphone	
Éducation permanente							

Une évaluation de ce modèle selon les principes et les objectifs établis antérieurement indique que le regroupement homogène linguistique est respecté : avantage majeur de regrouper toute la population francophone d'une province lorsqu'elle est petite. Cependant, ce modèle ne reconnaît pas l'autonomie locale des écoles, ni l'autorité du palier régional, ce qui peut avoir des conséquences lorsque des classes et des écoles seront instaurées dans tous les comtés de la province. En outre, le ministère de l'Éducation ignore pour le moment le palier provincial. Puisque la commission scolaire provinciale francophone maintient tous les pouvoirs dévolus par la *School Act*, le modèle remet tous les pouvoirs décisionnels aux mains de la minorité (tableau IV-14), à l'exception de celles que conserve le ministre de l'Éducation : l'approbation de nouvelles classes, un nouveau réseau de transport et la désignation d'écoles françaises. Ainsi, les éléments essentiels à l'épanouissement de la minorité sont acquis, mais restent à concrétiser.

En posant les questions de principes (l'épanouissement de la minorité et une structure permettant l'action positive), nous constatons que ce modèle pourrait répondre aux droits conférés par l'article 23 de la *Charte*. Il pourrait donner un plein pouvoir de gestion à la minorité. Cependant, l'autonomie locale pourrait être améliorée.

Les avantages de ce modèle sont donc : le regroupement géographique d'une petite population sur un vaste territoire, le pouvoir de décision sur les aspects essentiels de l'éducation de la minorité, la force d'action facilitée.

Par contre, nous y voyons les *inconvenients* suivants :

- l'autonomie locale n'est pas assurée;
- la commission scolaire francophone est soumise à l'approbation du ministre en ce qui a trait à toute nouvelle offre de services;
- aucune unité n'est prévue au sein du ministère de l'Éducation.

La principale difficulté des deux modèles de commissions scolaires provinciales que nous avons étudiées, réside dans la difficulté d'établir un équilibre entre les paliers décisionnels. Par ce type de modèle, la minorité se dote d'une structure qui pourrait favoriser son épanouissement et lui offrir les moyens de se prendre en mains. En même temps, toutefois, elle risque d'être victime d'une trop grande centralisation. Le grand défi reste de concilier l'autonomie décisionnelle locale avec l'efficacité administrative adéquate pour assurer la prestation de services de qualité. Par ailleurs, la représentation doit réconcilier les intérêts des personnes touchées, soit les parents et les membres de la collectivité minoritaire. Il s'agit là d'une difficulté importante puisque la collectivité est parfois moins militante que les parents qui ressentent davantage l'urgence de leurs requêtes. Les modèles de gestion provinciaux sont novateurs; reste à les préciser, à réviser certaines de leurs caractéristiques et à les perfectionner.

phones. Ces recommandations n'ont pas été retenues lors de l'instauration de la commission scolaire provinciale.

Selon une étude subséquente (Arsenault, 1988) au rapport de MM. Desjarlais et Michaud, 40 p. 100 des francophones de l'Île-du-Prince-Édouard recommandent ce modèle de gestion. Faisant suite à l'arrêt rendu dans le *Renvoi constitutionnel* qui accordait un droit de participation à la minorité, le gouvernement de l'Île-du-Prince-Édouard adopte des amendements à la *Loi sur l'éducation*. Ces règlements ont pour effet de mettre en vigueur le modèle de commission scolaire provinciale suggéré antérieurement. Son siège administratif est à Abrams Village [6.04 (3)] et la langue de fonctionnement est le français [6.04 (2)]. Ainsi, la commission scolaire de l'unité n° 5 prend la responsabilité de l'instruction en français :

6.05 (1) *The French school board shall have jurisdiction over and administer the regulations.*
French language instruction in the province in accordance with the Act and

Les pouvoirs et les responsabilités attribués au conseil de la commission scolaire provinciale de la minorité francophone sont les mêmes que ceux des conseils des divisions tels que décrits par les articles 13 à 36 de la *School Act*. De plus, la commission scolaire francophone a la responsabilité d'ouvrir des classes françaises là où le besoin est manifeste ou encore de fournir le transport vers ces classes ou ces écoles.

La commission scolaire francophone de l'unité n° 5 doit également transmettre aux parents l'information sur les programmes offerts ou à offrir en français. Elle planifie toute nouvelle offre de services, sous réserve de l'approbation du ministre. La désignation de nouvelles écoles françaises est la responsabilité du ministre.

L'élection des personnes éligibles assure la représentativité à la commission scolaire :

— résident âgé d'au moins 18 ans; et
 — parent d'un enfant qui reçoit l'instruction en français, ou parent d'un enfant admissible en vertu de l'article 23 ou encore d'un enfant qui serait admissible si cette personne en avait un [parent].

Le conseil de la commission scolaire est composé de dix membres élus de la région administrative antérieurement connue sous le nom d'unité n° 5, Evangéline, et de cinq autres membres élus.

Le financement de l'éducation de la minorité francophone provient des mêmes sources que celle de l'éducation majoritaire à l'Île-du-Prince-Édouard, soit les subventions gouvernementales.

des paliers local ou régional. Tant par l'esprit que par l'élaboration de ses principes, ce modèle vise nettement et de façon explicite l'épanouissement de la minorité en la dotant d'une force d'action.

Les Franco-Manitobains expriment leurs craintes en notant la divergence des besoins entre la ville et la campagne. On parle de la grande étendue des territoires, des distances qui risquent de transformer les résidents des régions rurales en gens de « seconde classe », personnes « négligées » ou « derniers servis ». Peut-être craignent-ils d'avoir peu à dire dans un système centralisé, la représentation au Conseil provincial étant insuffisante pour assurer le contraire. L'autonomie locale risque de disparaître et les problèmes locaux de demeurer irrésolus (Dubé, 1988, p. 12).

b. *Ile-du-Prince-Edouard* (1990)

Le modèle de commission scolaire provinciale de l'Ile-du-Prince-Edouard mis en vigueur en 1990 a pour caractéristique principale l'extension du territoire antérieur de l'unité n° 5 de l'ouest de l'Ile, connue sous le nom de région Evangéline et qui desservait les francophones concentrés dans la région. Le modèle établit donc une commission scolaire ayant toute la province comme territoire géographique.

Historiquement, c'est en 1984 que la Société Saint-Thomas d'Aquin demande à MM. Lionel Desjarlais et Pierre Michaud d'effectuer une étude qui permettra à la Société de négocier les droits de la minorité avec le ministère de l'Éducation. Le rapport technique intitulé *Attentes et aspirations des Acadiens de l'Ile-du-Prince-Edouard* en matière d'éducation veut répondre aux besoins d'une population répartie sur tout le territoire¹¹. Il fait deux recommandations :

1. l'extension de la compétence du conseil scolaire de l'unité n° 5 (région Evangéline) à tous les francophones peu importe où ils demeurent dans la province;

2. la création au ministère de l'Éducation d'une direction générale de l'enseignement en français. (p. 3)

Ainsi, le rapport propose un modèle de gestion provinciale pour la minorité.

Ce modèle de gestion provinciale reconnaissait, entre autres choses, le rôle prépondérant joué par le ministère de l'Éducation en matière « de programmation, d'animation pédagogique et de financement ». Il proposait qu'une « direction générale de l'enseignement en français » soit créée au ministère et qu'elle relève directement du sous-ministre de l'Éducation. Garantie de la qualité de l'éducation en français, cette section serait constituée d'une direction, d'un conseiller pédagogique, d'un psycho-pédagogue et d'un spécialiste en technologie éducative. Elle permettrait que les décisions d'ordre administratif et pédagogique qui sont prises quotidiennement au ministère tiennent compte des franco-

5. Service de la vie étudiante	C a l.	6. Service des relations- école-milieu	C a l.	7. Service aux activités complémentaires	C a l.	8. Service de la programmation	C a l.	9. Service de l'évaluation et de la recherche	C a l.
Consultation et animation <ul style="list-style-type: none"> • orientation • psychologie • information scolaire • service de santé • pastorale • activités étudiantes 	DP DP DP	Comité de parents Comité d'école École communautaire Comité conjoint scolaire municipal Concertation communautaire	DL	Bibliothèque Audiovisuel Ordinateurs et informatique	DP	Élaboration de programmes Évaluation de l'école Évaluation du matériel didactique Évaluation des programmes	DP	Évaluation du rendement des étudiants Évaluation du système scolaire Évaluation des enseignants Recherche	
Fréquentation scolaire			DR						
<ul style="list-style-type: none"> • admission • présences 									
Surveillance									
Transport scolaire	DP								
<ul style="list-style-type: none"> • contrats • transferts 									
Cafétéria									
Prêts et bourses	DP								
Sports et loisirs	DP								
Résidences	DP								

*Catégories de pouvoirs : Voir la légende du tableau IV-4.

Tableau IV-13

Modèle de gestion scolaire proposé – Parallèle à la structure majoritaire : Commission scolaire du Manitoba (1988)

1. Service de l'enseignement	C* a t	2. Service des finances et administration générale	C a t	3. Service du personnel	C a t	4. Service de l'équipement	C a t
Enseignement préscolaire	DR	Administration du service		Administration du service		Administration du service	
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux		Budget	DP	Organisation du travail		Approvisionnement	
		Contrôle interne		Recrutement et sélection		Carionnage	
Enseignement élémentaire	DR	Paye	DP	Affectation et rémunération		Entretien et réparation	DP
• régulier		Perception des revenus		Évaluation		– bâtiments, terrains	
• enfance inadaptée/douée	DP	Conseils des commissaires et de direction [élection et (ou) nomination]		Accréditation (provinciale)		Entretien ménager	DP
Enseignement secondaire	DR			Perfectionnement professionnel		Consommation énergétique	
• régulier				Développement organisationnel		– chauffage, électricité	
– matières des programmes		Direction générale				Location/construction d'immeubles	DP
• professionnel		Secrétariat général				Protection et sécurité	
– ateliers		Service de la dette				– assurance, surveillance	
– tronc commun		Orientation des projets éducatifs				Transfert scolaire et municipal	
• adolescence inadaptée/douée	DP	Politiques				– échanges de services	
• groupes d'étudiants spéciaux	DR	Informatique				Communication électronique	
Classes d'accueil	DR					– téléphone, interphone	
Éducation permanente	DP						

Au palier provincial, la commission scolaire embauche un directeur général, des coordonnateurs de programmes, des coordonnateurs de services spéciaux et un directeur adjoint des finances. (Voir au tableau IV-12 : le processus administratif.)

Les quatre conseils régionaux des comités d'école sont composés d'un délégué de chaque comité d'école (tableau IV-11), de deux commissaires provinciaux de la région ainsi que de l'adjoint régional à la direction générale (palier provincial). Le rôle de ce comité est de définir les besoins de la région et de représenter cette dernière à la commission provinciale. Il participe au processus de sélection de l'adjoint régional.

Le comité d'école est composé de la direction, de représentants des parents ainsi que d'un représentant des enseignants et des étudiants. Son rôle est de présenter le point de vue local au conseil régional. Il participe à la sélection des membres de la direction d'école et à l'orientation de cette dernière.

Trois options sont formulées pour le financement : subventions globales du gouvernement, perception d'une taxe spéciale par les municipalités, ou encore autorisation donnée à la commission scolaire provinciale de percevoir des taxes. De toute manière, le modèle réclame un financement équitable.

Comme l'indique le tableau IV-13 qui récapitule les composantes de la gestion décrites dans le modèle, les champs décisionnels ne sont pas clairement circonscrits. Nous y avons inscrit les composantes gérées par la minorité sur le plan local (DL), régional (DR) ou provincial (DP). Cependant, le partage décisionnel est décrit en fonction de la « participation » entre les paliers local, régional et provincial. Mais que signifie participation ? Est-ce une délégation de pouvoir aux divers paliers ou est-ce un mode de consultation ? Qui prend la décision finale relative aux budgets ? Le modèle manitobain n'aborde pas ces questions.

Le regroupement effectué par le modèle manitobain répond à la nécessité d'homogénéité linguistique de ceux qui participent à la gestion pour la minorité. Cependant, quoique ce type de gestion crée trois paliers de rassemblement, tous nécessaires, il ne lègue pas de véritable responsabilité aux paliers local et régional. En fait, l'utilité du palier régional est illusoire puisque les commissaires du palier provincial ne proviennent pas de ce comité. Le regroupement aux divers niveaux est en principe important, mais la structure demande quelques ajustements pour établir de véritables champs décisionnels. C'est en lui donnant tous les droits et responsabilités des commissions scolaires de la province que le modèle provincial manitobain pourrait se prévaloir de tous les éléments nécessaires à l'épanouissement de la communauté minoritaire.

En somme, le modèle manitobain propose une structure novatrice de gestion scolaire minoritaire. Son grand avantage consiste dans le regroupement des forces de la minorité sur divers paliers. Mais ce modèle comporte une faiblesse, puisqu'il faudra encore équilibrer équitablement les paliers décisionnels et fournir au palier local un véritable mécanisme de gestion. Pour le moment, il penche nettement en faveur du palier provincial au détriment

Tableau IV-12
Organigramme administratif (Manitoba)

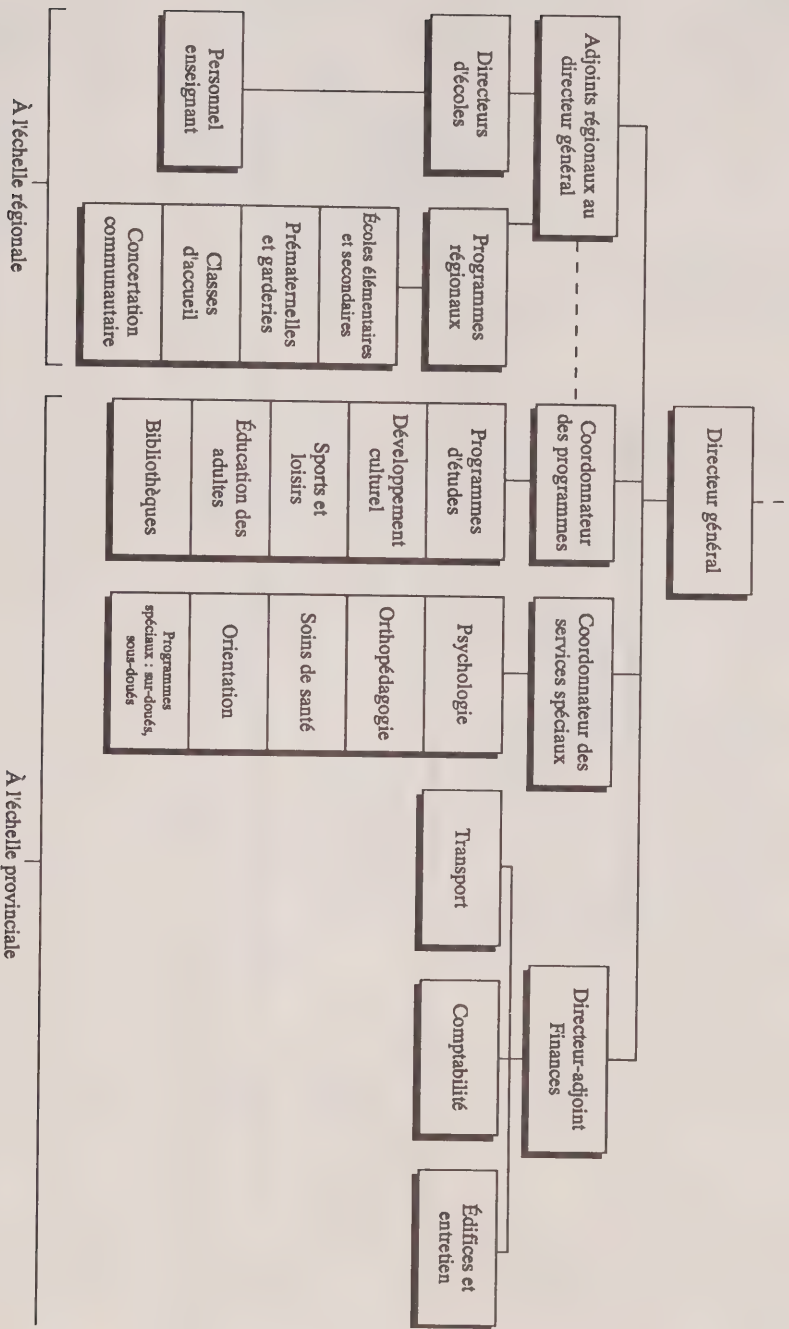
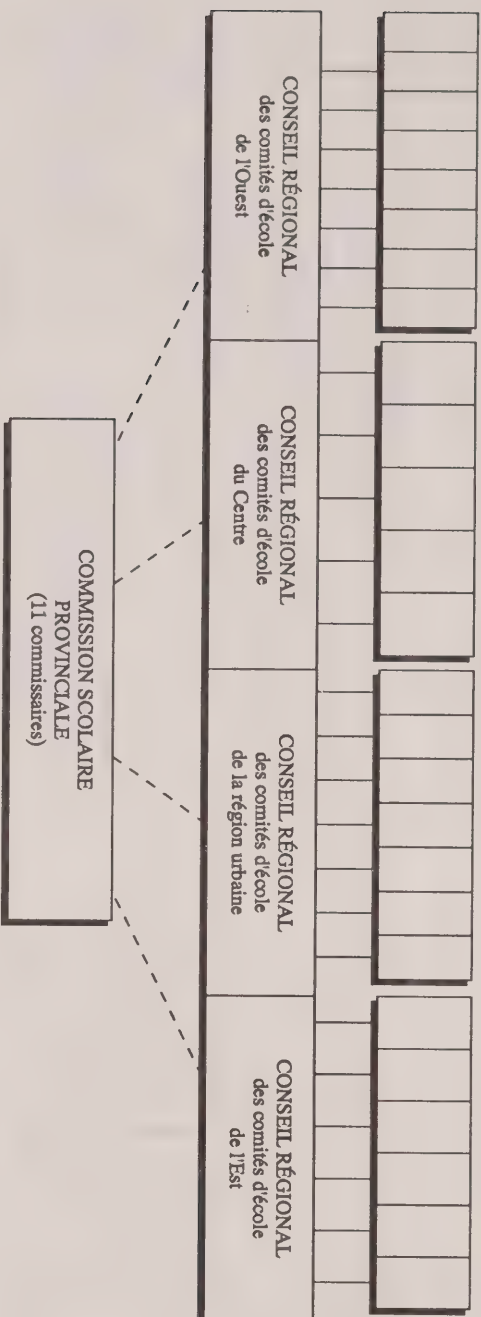


Tableau IV-11
Le modèle de gestion : le processus consultatif
Organigramme (Manitoba)

COMITÉS D'ÉCOLE*



* Un comité d'école pour les écoles franco-manitobaines désignées par le Bureau de l'Éducation française.

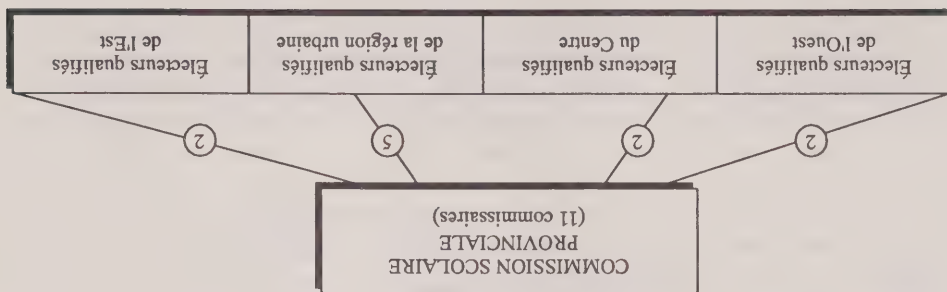
réactions publiques pouvant mettre en cause l'harmonie sociale. Lorsque la structure locale ou divisionnaire refuse de reconnaître un rôle au comité de parents, ce dernier devient malgré lui un groupe de pression. Dans ce contexte, les gains obtenus par la minorité sont parfois perçus comme le résultat de subversions. (p. 31)

Le modèle de gestion proposé pour remédier aux difficultés du système actuel est une commission scolaire provinciale gérant les services éducatifs de la minorité de langue officielle dont le territoire a pour limites géographiques celles de la province elle-même. Le modèle se fonde sur dix principes fondamentaux :

- l'égalité;
- le droit à l'instruction en français;
- le droit à des établissements autonomes;
- le droit de gérer les établissements de la minorité;
- le droit à des mesures réparatrices;
- le droit à une éducation de qualité égale à celle de la majorité;
- le droit à un financement juste et équitable;
- l'autonomie locale et régionale;
- l'école au service de la communauté;
- le respect des acquis.

Les tableaux IV-10, IV-11 et IV-12 indiquent que l'exercice des pouvoirs est réparti sur trois niveaux : provincial, régional et local. On constate que la commission scolaire provinciale a les mêmes pouvoirs que les autres commissions scolaires de la province. Elle est formée de 11 commissaires élus parmi les titulaires de l'article 23 et habilités à voter en vertu des lois électorales du Manitoba dans quatre zones minoritaires dont les frontières sont définies dans le modèle : deux commissaires de l'ouest, deux du centre, cinq de la région urbaine et deux de l'est (tableau IV-10). Les modalités d'élection ne sont pas précisées dans le document décrivant le modèle proposé.

Tableau IV-10
Le modèle de gestion : le processus politique
Organigramme (Manitoba)



Cette évolution nous indique que les modèles qui tentent de répondre aux besoins de la minorité, sans changer la structure éducative provinciale, sont voués à l'échec, à plus ou moins brève échéance. Il est donc de plus en plus évident que le système de gestion doit être planifié en fonction des besoins particuliers de la minorité. Les modèles représentatifs auront été une nouvelle étape dans ce processus.

D. LES MODÈLES PARALLÈLES À LA STRUCTURE MAJORITAIRE

Par « modèles parallèles à la structure majoritaire », nous entendons des modèles qui, d'embée, accordent une pleine gestion aux membres de la minorité de langue officielle comme d'ailleurs s'en prévalent les membres de la communauté majoritaire. Ces modèles se fondent tous sur le concept de commission scolaire puisque c'est là la structure la mieux connue pour gérer les services éducatifs dans toutes les provinces canadiennes. Nous retrouvons donc, dans cette section, une description et une évaluation des commissions scolaires suivantes : provinciales, locales et régionales.

1. Les commissions scolaires linguistiques provinciales

Afin de répondre aux besoins de regroupement d'une population peu nombreuse et éparpillée sur un vaste territoire, le Manitoba a proposé l'établissement d'une commission scolaire provinciale, c'est-à-dire d'une commission scolaire dont le territoire toucherait l'étendue de la province. Une autre province, l'Île-du-Prince-Édouard a mis ce modèle en vigueur en 1990.

En général, la commission scolaire fait office d'unité juridique et administrative; elle regroupe des représentants des parents des écoles ainsi que des représentants de la minorité de langue officielle; elle se charge de la coordination sur le plan provincial. Sous sa gouverne et sur le plan local, des comités d'école assurent la gestion quotidienne de l'éducation minoritaire. Chacun des modèles est unique en son genre et comporte des avantages et des inconvénients particuliers que nous évaluons maintenant.

a. Manitoba (1988)

Au Manitoba, un Comité directeur des structures scolaires (CDSS) est né d'un regroupement de cinq organismes francophones¹⁰. En 1987, ce comité a formé un comité *ad hoc*, composé de six membres et de deux employés, dont le mandat était d'élaborer un modèle de gestion des écoles franco-manitobaines, comité qui publiait, en janvier 1988, un document intitulé

La gestion des écoles : un modèle à suivre.

C'est à partir de la conjoncture de 1988 que s'amorce le travail du comité. En effet :

Les parents et leurs comités ont dans la structure actuelle un rôle très limité, variant d'une région à l'autre. En effet, les gestionnaires consultent les parents à l'occasion, parfois uniquement pour les neutraliser, de façon à éviter les

2. *au service du personnel* : l'administration du service, le perfectionnement professionnel, la rémunération du personnel;

3. *au service de l'équipement* : l'administration du service.

Le service le plus crucial, soit les finances et l'administration générale, est justement celui qui est presque entièrement soumis au partage décisionnel. Par ailleurs, il faut noter que, selon ce modèle, tout partage décisionnel demeure soumis à l'approbation majoritaire puisque les conseillers anglophones sont majoritaires au conseil scolaire.

En somme, le modèle de la représentation proportionnelle et garantie ne répond pas aux besoins d'épanouissement culturel et linguistique de la minorité. Cette dernière n'en contrôle pas les aspects vitaux. Elle ne peut, étant donné la formule de financement, assurer l'égalité de traitement avec la majorité. Elle n'est pas non plus regroupée de façon homogène au niveau de la commission scolaire. Enfin, son regroupement géographique est toujours soumis aux normes de la majorité puisqu'il n'y a pas eu d'établissement d'une double carte scolaire regroupant de façon distincte la minorité et recoupant le territoire majoritaire.

Ce modèle marque toutefois une nette amélioration au regard des comités consultatifs. Mais il continue de réduire la minorité à l'impuissance puisqu'elle ne peut que réagir aux décisions prises avec la majorité, décisions qui ont des répercussions fondamentales sur l'éducation minoritaire.

En résumé, les lacunes du modèle de représentation proportionnelle et garantie de l'Ontario sont les suivantes :

- il n'institue pas de traitement égal de la minorité par rapport à la majorité;
- il ne regroupe pas, sous une même structure homogène, les membres de la minorité de langue officielle;
- il n'accorde pas de pouvoir décisionnel exclusif sur tous les aspects vitaux à l'épanouissement de la minorité;
- le financement n'est pas clairement établi.

La minorité francophone ontarienne reconnaît que le modèle de la représentation proportionnelle et garantie ne répond pas aux pleins droits conférés par l'article 23. C'est pourquoi six associations francophones ont signifié, en janvier 1990, leur intention de poursuivre le gouvernement ontarien devant les tribunaux. Le *projet de loi* n° 75, disent-elles, est inconstitutionnel puisqu'il ne permet pas d'améliorer la situation des francophones de l'Ontario.

Pourtant, la cour d'appel de l'Ontario avait, en 1984, souligné qu'hypothétiquement les domaines de gestion exclusive proposés dans le *Libre blanc* sur lequel repose le *projet de loi* n° 75, étaient nécessaires. Cependant, en faisant l'expérience de ce modèle de gestion scolaire, la minorité franco-ontarienne acquiert une meilleure connaissance de ce que constitue une gestion efficace et peut ainsi en informer les instances compétentes.

Le modèle de la représentation proportionnelle et garantie ayant été mis en vigueur depuis la promulgation du *projet de loi* n° 75, il fait déjà l'objet d'une évaluation par ses usagers. Les objections exprimées portent surtout sur l'ambiguïté et l'interprétation des domaines exclusifs ou partagés ainsi que sur les répercussions de ces interprétations sur les budgets. Par exemple, Rouleau (1988) note que les fonds pour l'embauche de spécialistes comme les architectes et les avocats, pour les cotisations professionnelles et pour les dépenses de congrès devraient provenir du budget central, alors qu'actuellement elles relèvent de domaines de compétence exclusifs, ce qui n'est pas sans créer de nombreuses confusions et des conflits.

De plus, les membres des sections minoritaires n'ont aucun contrôle sur le personnel central. La personne clé dans ce domaine est le directeur général. Même si le conseil peut imposer une personne peu sympathique aux besoins de la minorité, c'est pourtant elle qui gèrera l'administration des services éducatifs minoritaires et majoritaires. Il en est de même de la direction des services du personnel et de l'équipement, des concierges ou encore des chauffeurs d'autobus.

Nous notons également que la loi ne tient pas compte de la nécessité d'un financement adéquat pour offrir des services de qualité, équivalents à ceux de la majorité. Par exemple, le transport scolaire peut être plus dispendieux pour une minorité qui est répartie sur un plus grand territoire; aucune disposition financière ne permet cependant de remédier à cette situation. D'ailleurs, « la loi n'indique pas clairement que les [sections minoritaires] ont le pouvoir d'établir un budget et de l'administrer ». (Rouleau, 1988, p. 3)

Des difficultés importantes se posent aussi quant aux recensements des électeurs des conseillers scolaires et à leur représentativité de la minorité. La loi prévoit que les citoyens admissibles en vertu de l'article 23 doivent manifester leur désir de participer aux élections des conseillers de la minorité. Ainsi, toute personne qui ne se présente pas explicitement comme francophone est déclarée membre de la majorité, ce qui a pour effet de diminuer le bassin de population de la minorité. De plus, des résidents peuvent envoyer leurs enfants dans les écoles ou des classes de la minorité sans voter pour les représentants de la minorité ou même sans payer leurs taxes. Le système demeure donc centré sur les formules et les structures en vigueur pour la majorité de sorte que les membres de la minorité ne peuvent automatiquement se prévaloir de leurs droits à l'instruction et à la gestion, contrairement aux membres de la majorité.

Comme l'indique le tableau IV-9, le modèle de la représentation proportionnelle et garantie ne protège pas les composantes essentielles à l'épanouissement de la minorité qui, par conséquent, ne contrôle pas les aspects vitaux suivants :

1. *au service des finances et de l'administration générale* : l'administration du service, la préparation et la surveillance du budget, le contrôle interne, la paye, l'établissement des revenus à percevoir (si le système demande une levée de taxes), le conseil des commissaires ou des personnes élues ou nommées, la direction générale, le secrétariat général et les politiques;

5. Service de la vie étudiante	C a t.	6. Service des relations-école-milieu	C a t.	7. Service aux activités complémentaires	C a t.	8. Service de la programmation	C a t.	9. Service de l'évaluation et de la recherche	C a t.
Consultation et animation	DL	Comité de parents	DL	Bibliothèque	DL	Élaboration de programmes	DL	Évaluation du rendement des étudiants	DL
<ul style="list-style-type: none"> • orientation • psychologie • information scolaire • service de santé • pastorale • activités étudiantes 		Comité d'école	DL	Audiotvisuel	XP	Évaluation de l'école	DL	Évaluation du système scolaire	XP
		École communautaire	DL	Ordinateurs et informatique	XP	Évaluation du matériel didactique	DL	Évaluation des enseignants	DL
		Comité conjoint scolaire municipal							
Fréquentation scolaire		Ententes avec d'autres conseils scolaires	DL			Évaluation des programmes	DL	Recherche	XP
<ul style="list-style-type: none"> • admission • présences 	DL DL					Formation pédagogique			
Surveillance	DL					Personnel du ministère			
Transport scolaire	XP								
<ul style="list-style-type: none"> • contrats • transferts 									
Cafétéria									
Prêts et bourses									
Résidences									

*Catégories de pouvoirs : Voir la légende du tableau IV-4.

Tableau IV-9

Modèle de gestion scolaire en vigueur – Représentation proportionnelle et garantie : Ontario (1986)

1. Service de l'enseignement	C ^a a l.	2. Service des finances et administration générale	C ^a a l.	3. Service du personnel	C ^a a l.	4. Service de l'équipement	C ^a a l.
Enseignement préscolaire	DL	Administration du service Budget Contrôle interne Contrôle externe Paye	XP DL/XP XP XP XP	Administration du service Organisation du travail Recrutement et sélection	XP DL DL	Administration du service Approvisionnement Camionnage Entretien et réparation	XP XP XP XP
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux							
Enseignement élémentaire	DL	Perception des revenus Conseils des commissaires et de direction [élection et (ou) nomination]	XP XP	Affectation et rémunération Évaluation Accréditation (provinciale)	DL XP XP	Entretien et réparation – bâtiments, terrains Entretien ménager Consommation énergétique – chauffage, électricité	XP XP XP XP
• régulier • enfance inadaptée/douée							
Enseignement secondaire	DL	Direction générale Secrétariat général Service de la dette Orientation des projets éducatifs Politiques Informatique	XP XP XP DL XP XP	Perfectionnement professionnel Développement organisationnel	DL XP	Location/construction d'immeubles Protection et sécurité – assurance, surveillance Transfert scolaire et municipal – échanges de services Communication électronique – téléphone, interphone	XP XP XP XP XP
• régulier – matières des programmes • professionnel – ateliers – tronc commun • adolescence inadaptée/douée • groupes d'étudiants spéciaux							
Classes d'accueil	DL						
Éducation permanente	DL						

Le conseil de la commission scolaire, quant à lui, garde le nombre de membres auquel il a toujours eu droit pour sa région, sauf si le nombre de conseillers minoritaires calculé selon la représentation est inférieur à trois. Dans ce cas, le nombre total de conseillers est augmenté par la différence. Pour être élus, les conseillers minoritaires sont soumis aux mêmes règles d'éligibilité que les conseillers majoritaires; de plus, ils jouissent des droits conférés par les paragraphes (1) et (2) de l'article 23 et sont tenus de voter uniquement pour les membres de la section minoritaire.

Le projet de loi n° 75 distingue les champs décisionnels réservés exclusivement aux membres de la section de langue minoritaire. Ce sont :

- la planification et l'établissement des unités d'enseignement en français, incluant la préparation et la soumission des prévisions de dépenses en capital;
- l'administration et la fermeture des unités d'enseignement en français;
- la formation des comités d'admission;
- la planification, l'établissement et le maintien des programmes et des cours pour les unités d'enseignement en français;
- le recrutement et l'affectation du personnel enseignant, administratif et de supervision;
- les ententes avec d'autres commissions scolaires. (p. 14)

Tout autre domaine fait partie du champ décisionnel commun entre la majorité et la minorité. En outre, la loi stipule que les domaines suivants doivent être soumis à un partage des décisions des services centralisés :

- les salaires, les bénéfices, le perfectionnement professionnel autre que celui du personnel géré par la section minoritaire;
- le maintien et l'exploitation des services et du matériel requis pour les édifices scolaires;
- l'approvisionnement autre que le matériel didactique;
- le transport;
- les fonds de réserve et les fonds courants;
- le bureau central et ses services;
- les améliorations autres que l'ameublement pour les écoles, les livres de bibliothèque et le matériel didactique. (p. 17)

Le tableau IV-9 illustre toutes ces composantes et indique le palier décisionnel auquel elles appartiennent : pouvoir partagé entre la majorité et la minorité (XP) et pouvoir décisionnel par la minorité sur le plan local ou régional des sections de langue minoritaire (DL).

la gestion des services éducatifs à la minorité francophone : 1) les comités consultatifs, 2) le Conseil de l'enseignement en langue minoritaire, 3) la représentation proportionnelle et garantie, 4) la représentation directe et 5) la commission scolaire homogène. Dans cette section, nous présentons une description et une évaluation des deux modèles représentatifs.

1. La représentation directe (Ontario, 1984)

Le modèle de représentation directe, proposé dans le rapport d'étude intitulé *Rapport final du Comité d'étude sur la gestion de l'éducation en langue minoritaire*, fonde la représentation des membres de la minorité sur la répartition des propriétés résidentielles et agricoles du groupe linguistique par rapport à la valeur totale des propriétés de la division scolaire majoritaire de la région. Une représentation d'un nombre minimum de quatre conseillers est garantie au conseil de la division scolaire alors que le nombre total de membres du conseil demeure inchangé. Dans cette structure de gestion, « les conseillers de langue minoritaire auront des pouvoirs de décision exclusifs en ce qui concerne l'affectation et l'emploi des subventions spéciales allouées au groupe linguistique minoritaire » (p. 16).

Le modèle de la représentation directe est fondé entièrement sur une réalité économique, soit l'évaluation des biens de la minorité et non sur les droits à l'éducation. Il est donc, d'embée, inacceptable en vertu des droits conférés par l'article 23 de la *Charte*. De plus, les secteurs de gestion exclusive ne touchent que les subventions spéciales accordées à la minorité; ainsi, elle ne permet qu'une gestion des composantes périphériques de l'éducation minoritaire. Le comité Sullivan admet l'insuffisance de ce modèle. Sa structure permet cependant une transition idéologique des modèles consultatifs vers le modèle de représentation proportionnelle et garantie qui sera mis en vigueur par le *projet de loi n° 75*.

2. La représentation proportionnelle et garantie (Ontario, 1986)

Par le modèle de représentation proportionnelle et garantie instauré par la loi en 1986, des « sections » de langue minoritaire (française ou anglaise) sont obligatoirement formées lorsqu'une ou l'autre de ces deux conditions prévaut : 1) là où une commission scolaire offre des classes ou des écoles de la minorité ou 2) là où elle achète les services pour une minorité de plus de 300 élèves ou de 10 p. 100 de sa population étudiante. Ce modèle assure une représentation au sein des structures existantes et ne change pas la carte scolaire.

Le nombre de membres du conseil de la section de langue minoritaire est calculé selon la formule suivante qui est à la fois, comme son appellation l'indique, proportionnelle et garantie :

Proportionnelle : la même proportion de membres élus à la commission scolaire que celle d'élèves résidents inscrits par rapport au nombre total d'élèves pour l'ensemble de la commission scolaire.

Garantie : un minimum de trois représentants de la minorité est garanti.

Comité d'études sur la gestion de l'éducation en langue minoritaire et 2) la représentation proportionnelle et garantie mise en vigueur par le *projet de loi n° 75* promulgué le 10 juillet 1986. Ces modèles visent, en résumé, à fournir à la minorité de langue officielle les moyens d'exercer leur droit à la gestion à l'intérieur des structures scolaires existant en Ontario.

En 1968, avec les *projets de lois n° 140* et *n° 141*, le gouvernement de l'Ontario reconnaît la légitimité des écoles élémentaires et secondaires de langue française, mais il confie aux commissaires scolaires de langue anglaise la responsabilité additionnelle de gérer les écoles de langue française. Des problèmes surgissent dès le début des années 1970 de sorte qu'en 1975, la question de la gestion des écoles de la minorité officielle prend une envergure provinciale. En 1977, la Commission Mayo, chargée d'enquêter sur la situation dans la région d'Ottawa-Carleton, recommande la création d'une commission scolaire homogène francophone et catholique. Mais le gouvernement refuse de mettre sur pied cette structure. En 1981, un rapport résultant de « l'Enquête sur l'éducation au niveau secondaire » recommande la création de structures nouvelles de gestion pour répondre aux besoins de la minorité officielle. C'est ainsi qu'est lancée l'idée que, pour répondre aux besoins de la minorité francophone, il est souhaitable de créer une structure différente de celle du système de commission scolaire.

Publié en avril 1982, le rapport du Comité mixte sur la gestion des écoles élémentaires et secondaires de langue française propose une structure reposant sur un principe et trois mesures administratives :

Principe : la reconnaissance du droit à l'instruction dans sa langue pour tout francophone.

Mesures administratives :

1. la création de sections de langue minoritaire dont sera assurée la représentation linguistique et à qui sera accordé le pouvoir de décision et le contrôle du budget;

2. le fusionnement des quatre commissions scolaires d'Ottawa-Carleton en deux;

3. la gestion des services éducatifs de langue française de Toronto par quatre commissaires.

Le rapport du Comité mixte est soumis aux délibérations, aux modifications, aux contre-propositions. Il donnera lieu à l'adoption, en 1986, du *projet de loi n° 75*.

Par ailleurs, en 1984, un Comité d'études sur la gestion de l'éducation en langue minoritaire, sous la présidence de Mme Maureen Sullivan, résume les options envisagées pour confier

Ce modèle ne répond pas non plus à l'objectif de l'égalité de traitement. Toute délégation de pouvoirs sous-entend, par définition, l'infériorité de ceux à qui elle s'adresse. Or, dans le cas qui nous occupe, on peut même mettre en doute le fait qu'il y ait effectivement délégation; l'ESCB demeure l'autorité finale et peut d'ailleurs retirer tous les pouvoirs délégués à son gré.

Ce modèle vient-il modifier une situation à réformer ? Au point de départ, il reconnaît la dimension historique de la question mais n'assure nullement l'épanouissement de la minorité francophone par des mesures appropriées. Cette dernière est toujours forcée de réagir aux décisions de l'autorité supérieure, soit l'ESCB.

En somme, le modèle contractuel de l'ESCB reconnaît la présence de la minorité francophone à Edmonton, mais ne lui donne aucun moyen d'engager les actions qui assureraient son épanouissement. En fait, ce modèle correspond à un comité consultatif formel. Les instances francophones ont d'ailleurs unanimement rejeté ce modèle pour les raisons suivantes :

Nous voulons un budget minimal, non inférieur à celui qui dessert aujourd'hui les écoles. En réalité, ce modèle propose un « comité avisé » à l'administration. Il donne plus de responsabilités aux francophones mais ne garantit aucun véritable pouvoir.

Lors des audiences publiques tenues par l'ESCB en novembre 1987, les francophones ont exprimé leur déception : « Nous étions optimistes au début devant l'ouverture d'esprit manifestée par les commissaires [...]. Dès la présentation du modèle, cependant, les éléments clés d'une véritable gestion n'y étaient pas. » (Société, 1987, p. 1)

Les ententes contractuelles que nous avons étudiées, celles de Saskatoon et d'Edmonton, sont conçues unilatéralement en faveur des commissions scolaires de la majorité qui gardent jalousement leurs pouvoirs décisionnels. Il apparaît donc que ce type de modèle de gestion scolaire ne répond pas aux besoins de la minorité officielle. Certes, nous n'avons pu que prévoir les difficultés du modèle proposé à Edmonton; mais nous avons fait part des problèmes que rencontrent ceux qui font l'expérience du modèle de Saskatoon. Le Conseil de l'école canadienne-française de Saskatoon (1988) conclut d'ailleurs que le gouvernement de la Saskatchewan doit mettre sur pied une commission scolaire provinciale pour la minorité. Pour qu'une entente contractuelle entre les autorités locales majoritaires et les membres de la minorité de langue officielle soit viable, il faut prévoir, dès le départ, comme ce fut le cas récemment, une plus grande collaboration entre les deux parties et une égalité de droit à des services de qualité.

C. LES MODÈLES REPRÉSENTATIFS

Les modèles représentatifs sont originaires de l'Ontario. Avant d'en faire la description schématique et l'évaluation, nous présentons un bref historique de leur évolution. Ceux que nous étudions sont les suivants : 1) la représentation directe proposée en 1984 par le

5. Service de la vie étudiante	C a t.	6. Service des relations-école-milieu	C a t.	7. Service aux activités complémentaires	C a t.	8. Service de la programmation	C a t.	9. Service de l'évaluation et de la recherche	C a t.
Consultation et animation		Comité de parents	DL	Bibliothèque		Élaboration de programmes	XR	Évaluation du rendement des étudiants	X
• orientation		Comité d'école	DL	Audiovisuel		Évaluation de l'école	X	Évaluation du système scolaire	X
• psychologie		École communautaire		Ordinateurs et informatique		Évaluation du matériel didactique		Évaluation des enseignants	X
• information scolaire		Comité conjoint scolaire municipal				Évaluation des programmes		Recherche	
• service de santé						Formation pédagogique	X		
• parascolaire						Personnel du ministère			
• activités étudiantes									
Fréquentation scolaire									
• admission	DL								
• présences									
Surveillance									
Transport scolaire	XR								
• contrats									
• transients									
Cafétéria									
Prêts et bourses									
Résidences									

*Catégories de pouvoirs : Voir la légende du tableau IV-4.

Tableau IV-8

Modèle de gestion scolaire proposé – Contrat : Edmonton (1987)

1. Service de l'enseignement	C ^a a l.	2. Service des finances et administration générale	C ^a a l.	3. Service du personnel	C ^a a l.	4. Service de l'équipement	C ^a a l.
Enseignement préscolaire		Administration du service	X	Administration du service	X	Administration du service	X
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux	XR	Budget	XR	Organisation du travail	X	Approvisionnement	X
	X	Contrôle interne	XR	Recrutement et sélection	XR	Camionnage	
Enseignement élémentaire	XR	Contrôle externe				Entretien et réparation	XR
• régulier		Paye	X	Affectation	X	– bâtiments, terrains	
• enfance inadaptable/douée		Perception des revenus	X	et rémunération		Entretien ménager	X
Enseignement secondaire	X	Conseils des commissaires et de direction [élection et(ou) nomination]	X	Évaluation	X	Consommation énergétique	X
• régulier				Accréditation (provinciale)		– chauffage, électricité	
– matières des programmes		Direction générale	X	Perfectionnement professionnel	X	Location/construction d'immeubles	XR
• professionnel		Secrétariat général	X	Développement organisationnel	X	Protection et sécurité	X
– ateliers		Service de la dette	X			– assurance, surveillance	
• adolescence inadaptable/douée		Oriantation des projets éducatifs	XR			Transfert scolaire et municipal	
• groupes d'étudiants spéciaux		Politiques	X			– échanges de services	
		Informatique				Communication électronique	X
Classes d'accueil		Arrêtés (By-laws)	X			– téléphone, interphone	
XR							
Éducation permanente							

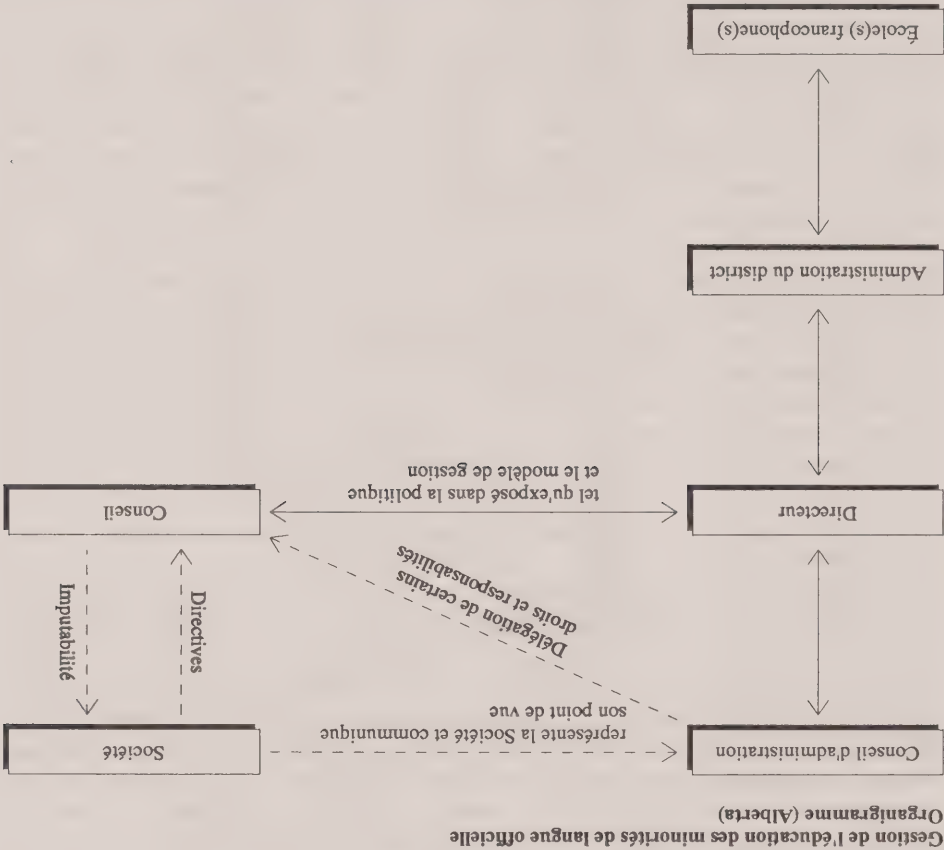
L'insistance avec laquelle l'ECSB se réclame de tous les droits n'est pas sans témoigner d'une certaine méfiance envers la minorité de langue officielle ni sans indiquer sa réticence à partager les pouvoirs de décision. Le tableau IV-8 résume les services précisés dans l'entente. Il indique que la minorité francophone ne détient aucune des composantes essentielles de la gestion. Parce que le conseil de parents accède à une certaine responsabilité dans les décisions, le modèle de l'ECSB se démarque de celui de Saskatoon. Cependant, il demeure que la minorité de langue officielle n'obtient pas de pouvoir de décision finale.

L'évaluation de ces modèles contractuels en fonction des principes et des objectifs de la gestion scolaire pour les minorités de langue officielle en fait ressortir les inconvénients. Sur le plan des principes, le modèle contractuel de l'ECSB ne vise pas l'homogénéité. En effet, le Council of French Language Education est réparti entre la Société de parents de la minorité et la commission scolaire anglophone. Ce « Council » a pour mandat de représenter les parents et de communiquer leurs points de vue à l'ECSB. Ainsi, un des membres de la commission scolaire siège à part égale au « Council ». Un palier intermédiaire où siège l'ECSB est donc établi en plus de la Société de parents. L'homogénéité linguistique n'est pas respectée non plus dans la mise en application des décisions puisque toute décision du « Council » ou de l'ECSB est mise en pratique par un surintendant employé par la commission scolaire. Il n'y a donc pas homogénéité de la minorité dans les sphères de responsabilité décisionnelle, ni dans celles de l'administration scolaire.

Le regroupement minoritaire à divers paliers, essentiel à la gestion scolaire, est également absent de ce modèle. Les francophones ne sont pas regroupés par une nouvelle carte scolaire permettant ainsi aux parents des banlieues d'Edmonton de se prévaloir des droits octroyés par l'article 23; le modèle demeure local et restreint à sa sphère géographique. Le « Council », formé de parents d'élèves, n'est pas représentatif de la communauté minoritaire. Ce modèle, d'origine locale, ne prévoit pas non plus de regroupement provincial.

Le financement accordé à la minorité provient de toutes les sources de fonds disponibles aux commissions scolaires et est réparti selon la formule *per capita*. Cependant, la planification du budget est approuvée par l'ECSB et ne tient pas compte des conditions spéciales de l'éducation minoritaire : le transport, par exemple, qui doit desservir une clientèle scolaire éparpillée dans toute la ville d'Edmonton, exige des sources de financement supplémentaires qui ne sont pas accordées à la minorité francophone.

Ce modèle répond-il aux objectifs visés par la gestion scolaire pour les minorités ? En fait, il ne leur accorde qu'un mince droit de regard au sein d'un modèle de gestion où l'ECSB conserve le plein pouvoir de décision sur tous les droits et responsabilités délégués. En réalité, la proposition donne l'impression, par des mots épars, de déléguer des pouvoirs à la minorité mais une vue d'ensemble du texte prouve qu'il n'en est rien. Ce texte est plein d'ambiguïtés; les responsabilités confiées d'une main sont reprises de l'autre. Ce modèle contractuel ne satisfait donc pas aux exigences de l'article 23 de la *Charte*.



Étant en marge du pouvoir, le « Council » et le comité de parents francophones sont forcément subordonnés à l'ECSCB. Leurs responsabilités sont les suivantes :

- contrôler les dépenses d'un budget « alloué et approuvé » par l'ECSCB, et être responsable de tous les coûts liés à l'administration générale de l'école;
- avec l'approbation de l'ECSCB et par l'entremise du surintendant, sélectionner les responsables de l'administration de l'école;
- planifier et gérer, par l'intermédiaire du surintendant, l'instruction selon les critères établis par le ministre de l'Éducation;
- gérer l'ouverture et la fermeture de classes par l'entremise du surintendant;
- organiser son propre système de transport ou établir une entente à cet égard avec l'ECSCB.

en association (l'Association Georges-et-Julia-Bugnet) fondent en 1983 une école privée⁸ et entament des procédures judiciaires. L'année suivante, l'Edmonton Catholic School Board (ECSB) ouvre une école pour la minorité de langue officielle : l'école Maurice-Lavallée.

En 1985, le jugement de la cour du banc de la reine dans la cause de l'Association Bugnet, l'affaire *Mahe et al. c. la reine*, confirme le droit de la minorité francophone à « un degré de gestion exclusive »⁹. En juin 1987, faisant suite à ce jugement, l'ECSB propose à la Société de parents francophones d'Edmonton (organisme regroupant les comités de parents de l'école Maurice-Lavallée et de l'école mixte J.H. Picard) un modèle de gestion intitulé *A Proposed Model for the Management of Official Minority Language Education in the Edmonton Catholic School District as per the Canadian Charter of Rights: Section 23*. Ce modèle veut perpétuer l'ouverture d'esprit dont a fait montre la commission en ce qui concerne l'enseignement à la minorité francophone et estime ainsi répondre aux exigences de la *Charte*. Largement inspiré de l'entente de Saskatoon, ce modèle a fait l'objet d'audiences publiques auxquelles ont participé les organismes de la minorité de langue française. Fortement contesté par la communauté francophone, ce modèle n'a jamais été mis en vigueur.

En général, tel que l'indique l'organigramme fourni par l'Edmonton Catholic School Board (tableau IV-7), le modèle propose deux régimes de pouvoir. Le premier demeure entier; c'est celui de l'ECSB et de tout son appareil administratif. Le deuxième, marginal, est le régime francophone composé de la Société des parents des écoles francophones d'Edmonton et d'un nouveau comité, le « French Language Education Council ». Ce dernier comité doit être formé de quatre membres de la Société et d'un commissaire de l'ECSB alors que le premier regroupe toujours les parents d'enfants de l'école Maurice-Lavallée et de l'école J.H. Picard. Le régime majoritaire maintient son droit de décision, le régime minoritaire acquiert un rôle de consultation et de responsabilité.

Voici maintenant une brève description des composantes du modèle. S'appuyant sur la *Loi sur l'éducation* de l'Alberta (1980), l'ECSB déclare dans le premier paragraphe de sa proposition qu'elle se réserve tous les droits et toutes les responsabilités touchant *toutes* les écoles relevant de sa compétence, tout le personnel et tous les étudiants. Plus précisément,

l'ECSB :

- garde toutes les responsabilités qui ne peuvent être déléguées;
- nomme un seul surintendant et un seul secrétaire-trésorier pour toutes ses écoles;
- adopte le budget total du French Language Education Council;
- retient le droit d'allocation des établissements et définit le sens du terme « établissement approprié »;
- s'arroge le droit d'arbitrage dans les disputes entre le surintendant et le « Council »;
- peut retirer un ou tous les droits et responsabilités délégués;
- garde tous les droits non spécifiquement nommés.

La principale cause des doléances du conseil est le manque de renseignements. En effet, le mode consultatif de gestion repose sur une diffusion ponctuelle d'information. Dans le cas présent, il résulte du manque d'information, « un climat de méfiance, d'appréhension, de cynisme qui, tout en étant déplorable, est compréhensible » [Conseil, 1988, p. 18 (traduction)]

Ce modèle de gestion ne répond ni aux objectifs visés par la gestion minoritaire, ni aux principes qui en découlent, ni aux raisons fondamentales des revendications des minorités. Puisqu'il ne donne aucun pouvoir de décision sur les aspects vitaux de l'éducation de la minorité, il ne respecte pas l'article 23 de la *Charte*. Aucun regroupement de la communauté minoritaire n'est effectué; seuls quelques parents ayant des enfants à l'école sont visés par l'entente contractuelle. L'homogénéité linguistique des paliers décisionnels n'est pas respectée puisque le conseil de l'école œuvre au palier local et est absent des paliers régional (commission scolaire) et provincial.

Le conseil lui-même, dans un mémoire au ministre de l'Éducation (1988) note que la mise en vigueur du modèle contractuel est la cause d'énergie gaspillée et d'un climat de méfiance : « *The lack of resources and of authority for the Conseil is guaranteed to drain parents' energies and efforts, in an atmosphere of distrust and paralyzing powerlessness* ».

(1988, p. 27)

En résumé, voici les inconvénients du modèle contractuel de Saskatoon :

- Les mesures permettant d'assurer le respect des pleins droits conférés par l'article 23 de la *Charte* ne sont pas mises en vigueur. Ce modèle ne fournit d'ailleurs pas de « degré de contrôle exclusif ».
- La qualité de services offerts ne permet pas à la minorité de bénéficier d'une éducation équivalente à celle de la majorité.
- Le regroupement linguistique n'est pas effectué aux paliers régional et provincial.
- Les décisions touchant les aspects vitaux de l'éducation sont prises par la commission scolaire majoritaire, notamment : le choix du personnel administratif et d'enseignement, les budgets, l'élaboration des programmes, la location de l'école, etc.
- Le modèle ne vise pas l'épanouissement de la communauté de langue officielle.
- Les parents gaspillent leur énergie à devoir contrer les décisions de la commission scolaire.

2. La proposition du Edmonton Catholic School Board (Alberta, 1987)

En 1981, un groupe de parents d'Edmonton demande au ministre de l'Éducation d'établir une école pour francophones et une commission scolaire autonome. Le ministre avise le groupe d'en faire la requête auprès des commissions scolaires anglophones. Ayant essuyé le refus des deux commissions scolaires d'Edmonton⁷, les parents, regroupés

5. Service de la vie étudiante	C a l.	6. Service des relations- école-milieu	C a l.	7. Service aux activités complémentaires	C a l.	8. Service de la programmation	C a l.	9. Service de l'évaluation et de la recherche	C a l.
Consultation et animation		Comité de parents	DL	Bibliothèque	XC	Élaboration de programmes	XC	Évaluation du rendement des étudiants	
• orientation		Comité d'école		Audiovisuel					
• psychologie		École		Ordinateurs et informatique		Évaluation de l'école	XC	Évaluation du système scolaire	X
• information scolaire		communautaire				Évaluation du matériel didactique	XC	Évaluation des enseignants	X
• service de santé		Comité conjoint scolaire municipal				évaluation des programmes		Recherche	
• pastorale						Formation pédagogique			
• activités étudiantes						Personnel du ministère			
Fréquentation scolaire	XC								
• admission									
• présences									
Surveillance	X								
Transport scolaire	XC								
• contrats									
• transferts									
Cafétéria									
Prêts et bourses									
Résidences									

*Catégories de pouvoirs : Voir la légende du tableau IV-4.

Tableau IV-6

Modèle de gestion scolaire en vigueur – Entente contractuelle : Saskatoon (1982)

1. Service de l'enseignement	C* a l.	2. Service des finances et administration générale	C a l.	3. Service du personnel	C a l.	4. Service de l'équipement	C a l.
Enseignement préscolaire	XC	Administration du service	X	Administration du service	X	Administration du service	X
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux		Budget	XC	Organisation du travail	XC	Approvisionnement	XC
Enseignement élémentaire	XC	Contrôle interne		Recrutement et sélection	XC	Carionnage	
• régulier		Contrôle externe				Entretien et réparation	X
• crèche inadaptée/douée		Paye	X	Affectation et rémunération	XC	– bâtiments, terrains	
Enseignement secondaire	XC	Perception des revenus	X	Évaluation	X	Entretien ménager	
• régulier		Conseils des commissaires et de direction [élection et (ou) nomination]	X	Accréditation (provinciale)		Consommation énergétique	
• crèche inadaptée/douée						– chauffage, électricité	
Enseignement des programmes		Direction générale	X	Perfectionnement professionnel	X	Location/construction d'immeubles	XC
• professionnel		Secrétaire général	X	Développement organisationnel	XC	Protection et sécurité	X
– ateliers		Service de la dette				– assurance, surveillance	
– non commun		Orientation des projets éducatifs	XC			Transfert scolaire et municipal	
• adolescence inadaptée/douée		Politiques	XC			– échanges de services	
• groupes d'étudiants spéciaux		Informatique				Communication électronique	
Classes d'accueil	XC					– téléphone, interphone	
Éducation permanente	DL						

ouvertes ». Ce comité est formé de deux membres du « Board », de deux membres du conseil de parents francophones et du directeur général de la commission scolaire.

Le tableau IV-6 résume les composantes sujettes à consultation et celles situées hors du champ de consultation de la minorité : la seule décision autonome que peuvent prendre les parents francophones porte sur le choix du nom de l'école.

L'évaluation de ce modèle de gestion indique qu'il s'apparente à un comité consultatif. C'est d'ailleurs la conclusion à laquelle en arrive le conseil de parents de l'école canadienne-française après six ans d'administration partagée avec le « Board » (Conseil, 1988). Le conseil n'a aucun pouvoir décisionnel; il demeure un groupe de pression. Le conseil fait état des multiples difficultés concrètes auxquelles il a dû faire face, notamment :

- la sélection d'enseignants que le « Board » a ensuite affectés à ses autres écoles plutôt qu'à celles du conseil;
- le recrutement tardif et inadéquat d'enseignants;
- le manque de publicité auprès du public francophone;
- les locaux dangereux, inadéquats, insuffisants ou partagés avec la majorité;
- les sources de subventions et de financement inconnues ne permettant pas d'établir en connaissance de cause les priorités budgétaires;
- les décisions d'évaluation et de réembauche du personnel administratif allant à l'encontre des recommandations du conseil;
- un programme de classe d'accueil élaboré par le « Board » et ne répondant pas aux besoins de la minorité;
- la double allégeance du personnel enseignant et administratif au conseil minoritaire et au « Board ».

B. LES MODÈLES CONTRACTUELS

Deux modèles contractuels ont été élaborés par des commissions scolaires de la majorité pour accorder à la minorité de langue officielle, « un degré de gestion » de ses programmes éducatifs. Le premier a été mis en vigueur à Saskatoon en 1982. Le deuxième, conçu à Edmonton en 1987, est encore à l'état de projet; la proposition est étudiée par la Société des parents des écoles francophones d'Edmonton et le Edmonton Catholic School District. Ces deux modèles provenant de provinces limitrophes comportent des ressemblances manifestes.

1. Le contrat de Saskatoon (Saskatchewan, 1982)

En 1965, les parents francophones de l'école St. Paul demandent au Board of Education of the St. Paul's Roman Catholic Separate School Division #20 de fournir l'instruction religieuse en français. Devant le refus du « Board », les parents organisent une grève, retirent leurs enfants de l'école St. Paul et fondent une école privée. Cette école est aujourd'hui une école d'immersion, la Saskatoon French School. Par ailleurs, les parents francophones de l'école St. Paul poursuivent leurs revendications auprès du « Board », d'une part, pour l'obtention du transport scolaire des enfants éloignés et, d'autre part, pour la reconnaissance de cette école comme « école désignée » pour francophones. En 1981, étant donné les difficultés qu'ils éprouvent dans leurs négociations avec le « Board », les parents demandent au ministre de l'Éducation de leur fournir une école francophone et une commission scolaire autonome. En janvier 1982, le ministre donne sa réponse aux parents : ils doivent déposer leur requête auprès des commissions scolaires existantes.

Ces événements mènent, en 1982, à l'ouverture d'une école francophone et à la signature d'une entente contractuelle entre le « Board » et les parents francophones de Saskatoon. Cette entente s'inspire largement de celle qui avait fourni à deux autres écoles⁶ le statut d'école affiliée au « Board ».

Le contrat signé entre les parents de l'école, regroupés sous le nom de Conseil de l'école canadienne-française de Saskatoon Inc., et le Board of Education of the St. Paul Catholic School Division déclare à plusieurs reprises que :

The Board covenants and agrees to [...] provide to the Conseil for the operation of the School instructional and educational and related services, which include personnel, financial and administrative services. (p. 4)

The Board shall be solely responsible for the education and the discipline of students attending the School. (p. 6)

Il précise, réitérant sa position, que le « Board » conserve toute autorité quant aux services qu'il doit fournir à la minorité : programmes éducatifs, personnel, administration et budget. Le « Board » propose de consulter le conseil de parents quant à ces services mais garde tout pouvoir décisionnel final. Mentionnons enfin que l'entente prévoit que soit fondé un comité conjoint entre les deux parties afin de « maintenir les voies de communication

5. Service de la vie étudiante	C a l.	6. Service des relations- école-milieu	C a l.	7. Service aux activités complémentaires	C a l.	8. Service de la programmation	C a l.	9. Service de l'évaluation et de la recherche	C a l.
Consultation et animation	XC	Comité de parents Comité d'école École communautaire Comité conjoint scolaire municipal	DL	Bibliothèque Audiovisuel Ordinateurs et informatique	XC XC XC	Élaboration de programmes Évaluation de l'école Évaluation du matériel didactique Évaluation des programmes	XC XC XC	Évaluation du rendement des étudiants Évaluation du système scolaire Évaluation des enseignants	XC
Fréquentation scolaire	XC							Recherche	
• admission • présences						Formation pédagogique Personnel du ministère			
Surveillance									
Transport scolaire	XC								
• contrats • transferts									
Cafétéria									
Prêts et bourses									
Résidences									

*Catégories de pouvoirs : Voir la légende du tableau IV.4.

Tableau IV-5

Modèle de gestion scolaire en vigueur - Comité consultatif protégé : Ontario (1986)

1. Service de l'enseignement	C ^a a l.	2. Service des finances et administration générale	C ^a a l.	3. Service du personnel	C ^a a l.	4. Service de l'équipement	C ^a a l.
Enseignement préscolaire	XC	Administration du service Budget Contrôle interne Contrôle externe		Administration du service Organisation du travail Recrutement et sélection		Administration du service Approvisionnement Carionnage	
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux							
Enseignement élémentaire	XC	Paye Perception des revenus		Affectation et rémunération Évaluation	XC	Entretien et réparation - bâtiments, terrains	
• régulier • enfance inadaptée/douée						Entretien ménager	
Enseignement secondaire	XC	Conseils des commissaires et de direction [élection et (ou) nomination] Direction générale Secrétariat général		Accréditation (provinciale) Perfectionnement professionnel		Consommation énergétique - chauffage, électricité	
• régulier - matières des programmes						Location/construction d'immeubles	XC
• professionnel		Service de la dette		Développement organisationnel		Protection et sécurité	
- ateliers - tronc commun			XC			- assurance, surveillance	
• adolescence inadaptée/douée		Politiques	XC			Transfert scolaire et municipal	
• groupes d'étudiants spéciaux		Informatique				- échanges de services	
Classes d'accueil	XC					Communication électronique - téléphone, interphone	
Éducation permanente							

moyens de gestion à la disposition des minorités. Mais la carte scolaire de l'Ontario n'est pas établie en fonction de critères linguistiques.

En outre, la structure particulière des comités consultatifs de l'Ontario fait en sorte que le siège des décisions touchant la minorité se situe à un palier autre que celui où se fait la consultation. En effet, le comité présente ses recommandations à une commission scolaire qui ne dispense pas l'instruction, mais qui a plutôt pour tâche de négocier l'entente ou le contrat d'achat de services. Ainsi, le comité consultatif ne traite pas directement avec l'organisme fournissant les services.

Enfin, en offrant une garantie partielle du respect des droits, la Commission ontarienne des langues d'enseignement compense quelque peu les inconvénients des comités consultatifs, mais elle fait dévier l'énergie de la minorité dans une direction qui l'éloigne du pouvoir.

Nous pouvons conclure que les comités consultatifs ne répondent pas aux besoins de la minorité de langue officielle. Ils comportent les faiblesses suivantes :

- ce mode de gestion ne permet pas de regrouper efficacement la minorité; il ne permet pas aux minorités de canaliser leur énergie; il les réduit plutôt à l'impuissance puisque qu'elles ne peuvent que réagir au lieu de passer à l'action;
- il ne vise nullement une égalité de traitement;
- il n'existe aucun financement autonome;
- l'homogénéité linguistique n'est pas respectée.

Nous maintenons que les comités consultatifs ne sont pas, à proprement parler, un modèle de gestion mais comme la structure actuelle du système scolaire en favorise la formation, les gouvernements privilégient souvent ce modèle comme formule de gestion pour les minorités de langue officielle.

4. dix contribuables francophones (ou plus) en font la demande par écrit. *(Projet de loi n° 75, p.7)*

Ces conditions limitent la création de comités consultatifs aux commissions scolaires (catholiques et publiques) qui n'offrent pas de classes en français et retiennent les services de commissions scolaires avoisinantes, comme c'est le cas notamment dans le centre de l'Ontario. Mais la *Loi sur l'éducation* de l'Ontario oblige les commissions scolaires à fournir un enseignement en français aux élèves admissibles en vertu de l'article 23. Aussi ces commissions doivent-elles prendre des dispositions contractuelles à cet effet; elles peuvent notamment acheter des services d'autres commissions scolaires et donc instituer un comité consultatif.

Le comité consultatif est formé de trois membres de la commission scolaire (majoritaire) et de six contribuables, représentant la communauté francophone et répartis selon les localités intéressées. Ce comité est formé par élection lors d'une assemblée des contribuables francophones. Le président du comité consultatif siège à titre de membre au conseil de la commission scolaire majoritaire et participe aux discussions touchant les questions de l'éducation en français. Il peut également transmettre les recommandations du comité consultatif susceptibles de répondre aux besoins éducatifs et culturels des élèves et de la communauté francophones.

Ce comité est plus influent que les comités consultatifs optionnels décrits précédemment, mais il n'a en soi aucun pouvoir décisionnel. Par contre, si la commission scolaire refuse une recommandation du comité, elle doit lui donner les motifs de son refus par écrit. Le tableau IV-5 décrit les aspects nommés par la loi qui font obligatoirement l'objet de consultations auprès du comité consultatif.

Une deuxième raison nous porte à qualifier de « protégés » les comités consultatifs de l'Ontario. Ils ont droit d'appel auprès de la Commission ontarienne des langues d'enseignement. Cette commission est composée de cinq membres nommés par le lieutenant-gouverneur en conseil et doit comprendre au moins deux membres francophones et deux anglophones. La Commission étudie les questions soulevées par les comités ou nomme un médiateur.

Les lacunes des comités consultatifs que nous avons présentées plus haut valent aussi pour le modèle des comités consultatifs protégés de l'Ontario. Ces derniers ne répondent ni aux raisons intrinsèques, ni aux objectifs, ni aux principes de la gestion pour les minorités. Le fait d'établir des comités consultatifs là où le nombre est moindre maintient dans cette situation périlleuse les bassins minoritaires justement les plus susceptibles d'assimilation.

En effet, comme c'est le cas des comités consultatifs « non protégés », les comités consultatifs de l'Ontario ne permettent pas un regroupement suffisant pour répondre aux besoins spécifiques de la minorité. Seul un nouveau regroupement des francophones pourrait permettre l'établissement d'écoles ou de classes de langue française et mettre ainsi d'autres

Enfin, le modèle des comités consultatifs ne répond pas aux deux conditions intrinsèques de la gestion scolaire minoritaire. Premièrement, il n'offre aucun moyen d'assurer l'épanouissement de la minorité car, en optant pour le *statu quo*, il ne vise pas la modification d'une situation peu favorable à l'épanouissement. Deuxièmement, les comités consultatifs ne donnent aux minorités aucun moyen de prendre en charge leur épanouissement. Au contraire, il les réduit à l'impuissance. Les parents, sans aucun pouvoir, doivent constamment réagir aux décisions des commissions scolaires. Les doléances des parents sont d'ailleurs multiples :

- les commissions scolaires ne comprennent pas les besoins de la minorité; elles ne les consultent pas ou, lorsqu'elles le font, ne tiennent pratiquement pas compte de leurs suggestions et de leurs recommandations;
- tout est sujet de requête pour les parents de la minorité : des livres de bibliothèque au transport;
- il règne une atmosphère de confrontation entre le conseil de la commission scolaire et le comité de parents;
- la pénurie de fonds constitue une excuse pour la commission scolaire pour offrir des services de moindre qualité.

Les comités consultatifs sont inefficaces et source de frustrations pour les minorités.

2. Les comités consultatifs protégés

Le *projet de loi* n° 75 de l'Ontario est entré en vigueur le 1^{er} octobre 1986 afin de créer, d'une part, des sections de langue française (ou anglaise) et, d'autre part, la commission scolaire du Toronto métropolitain². Avec l'instauration de ces deux modèles, les comités consultatifs de langue française déjà existants en Ontario se sont vus conférer une vocation distincte et précise. En effet, cette loi précise les conditions d'existence des comités consultatifs en tant que modèles de gestion (partielle) pour la minorité.

Nous appelons « comités consultatifs protégés » les comités de l'Ontario afin de les distinguer de ceux des autres provinces; ces derniers ne sont pas institués par la loi pour la minorité, alors que les comités ontariens sont obligatoirement créés lorsque quatre conditions sont réunies :

1. la commission scolaire ne gère pas d'unité de langue française, ou ne dispense pas l'instruction à la minorité dans des classes ou des écoles;
2. la commission scolaire a retenu, par entente, les services d'une autre commission scolaire pour dispenser l'instruction en français à un ou des élèves;
3. l'entente de services touche moins de 300 élèves ou encore moins de 10 p. 100 des inscriptions de la commission scolaire;

1. Les comités consultatifs optionnels pour les minorités

Les gouvernements de la Colombie-Britannique, de l'Alberta, de la Saskatchewan, du Manitoba, de la Nouvelle-Écosse et de Terre-Neuve encouragent la minorité de langue officielle francophone à se prévaloir des comités consultatifs afin de participer à la gestion de l'instruction en français. Ces comités demeurent partout optionnels, laissés à la discrétion des commissions scolaires majoritaires. Pour leur part, les parents francophones du Manitoba se sont prévus depuis longtemps de cette structure de comités et ont institué un système de comités de parents regroupés sur le plan provincial par une Fédération. D'ailleurs, une Commission nationale des parents francophones (CNPf) établit les liens entre les divers comités locaux et provinciaux dans toutes les régions du pays. Ces mécanismes constituent certainement un moyen de pression pour la minorité, mais il reste qu'ils ne lui donnent aucun pouvoir de décision. La grille d'analyse (tableau IV-4) le montre bien : la minorité ne peut avoir autorité sur les prises de décisions touchant les aspects vitaux de ses conditions d'épanouissement ni, comme l'indique le code XC, aucun pouvoir décisionnel.

En réalité, le modèle consultatif n'est pas un modèle de gestion. Il ne figure ici qu'à cause de la tendance des provinces anglophones à le favoriser pour répondre, au moins dans une certaine mesure, aux demandes de contrôle de la gestion scolaire par la minorité. Les comités consultatifs présentent plusieurs lacunes. Tout d'abord, ces comités consultatifs n'accordent pas aux minorités le « degré de gestion » garanti par l'article 23 de la *Charte*. Seul le juge *Wimmer* de la Saskatchewan reconnaît que les comités consultatifs constituent un mécanisme approprié pour la minorité; il ne les tolère cependant que lorsque l'instruction est dispensée dans des classes et non dans des établissements séparés. Donc, lorsque toutes les décisions sont prises par d'autres que les membres de la minorité de langue officielle, nous pouvons d'embée conclure que ce mécanisme ne répond pas aux critères énoncés à l'alinéa 23(3)b). Les mesures assurant le respect des pleins droits ne sont pas mises en œuvre.

Quant à l'égalité de traitement par rapport à la majorité, elle ne figure pas dans ce mécanisme car on y fait abstraction du caractère communautaire de l'éducation. En effet, la communauté majoritaire gère largement son éducation au niveau de la commission scolaire et non au niveau des comités d'école ou de parents. Pour qu'il y ait égalité de traitement, un système de gestion doit représenter toute la communauté minoritaire, comme le permet la structure des commissions scolaires, contrairement à celle des comités consultatifs. Parmi les autres faiblesses des comités consultatifs, signalons qu'ils ne regroupent les membres de la communauté minoritaire qu'au niveau local; de tels groupements sont insuffisants pour permettre une gestion indépendante puisque la gestion scolaire, comme nous l'avons vu au chapitre précédent, s'effectue également sur les plans régional et provincial. En outre, puisque les parents sont soumis aux décisions d'un groupe majoritaire, l'homogénéité linguistique n'est pas respectée. Enfin, aucune autonomie financière n'est prévue pour la minorité.

5. Service de la vie étudiante	C a l.	6. Service des relations- école-milieu	C a l.	7. Service aux activités complémentaires	C a l.	8. Service de la programmation	C a l.	9. Service de l'évaluation et de la recherche	C a l.
Consultation et animation	XC	Comité de parents	DL	Bibliothèque	XC	Élaboration de programmes	XC	Évaluation du rendement des étudiants	XC
• orientation		Comité d'école	DL	Audiovisuel	XC	Évaluation de l'école	XC	Évaluation du système scolaire	XC
• psychologie		École communautaire	XC	Ordinateurs et informatique	XC	Évaluation du matériel didactique	XC	Évaluation des enseignants	XC
• information scolaire		Comité conjoint scolaire municipal	XC			Évaluation des programmes	XC	Recherche	XC
• service de santé						Formation pédagogique	XC		
• pastorale						Personnel du ministère	X		
• activités étudiantes									
Fréquentation scolaire	XC								
• admission									
• présences									
Surveillance	XC								
Transport scolaire	XC								
• contrats									
• transferts									
Cafétéria	XC								
Prêts et bourses	XC								
Résidences	XC								

*Catégories de pouvoirs :

- X : aucun pouvoir décisionnel
 XC : aucun pouvoir décisionnel, consultation (éventuelle ou obligatoire)
 XR : responsabilité décisionnelle sujette à l'approbation majoritaire
 XP : pouvoir partagé
 DL : pouvoir décisionnel : sur le plan local
 DR : pouvoir décisionnel : sur le plan régional
 DP : pouvoir décisionnel : sur le plan provincial

Tableau IV-4

Modèle de gestion scolaire en vigueur - Comités consultatifs

1. Service de l'enseignement	C ^a a l.	2. Service des finances et administration générale	C a l.	3. Service du personnel	C a l.	4. Service de l'équipement	C a l.
Enseignement préscolaire	XC	Administration du service	X	Administration du service	XC	Administration du service	XC
• langage, mathématique, musical, social, artistique, scientifique, physique, religieux		Budget	XC	Organisation du travail	XC	Approvisionnement	XC
		Contrôle interne	XC	Recrutement et sélection	XC	Carionnage	XC
		Contrôle externe	X			Entretien et réparation	XC
Enseignement élémentaire	XC	Paye	XC	Affectation et rémunération	XC	Entretien et réparation	XC
• régulier		Perception des revenus	XC	Évaluation	XC	Entretien ménager	XC
• enfance inadaptes/douée		Conseils des commissaires et de direction (élection et/ou nomination)	X	Accréditation (provinciale)	X	Consommation énergétique	XC
Enseignement secondaire						– chauffage, électrifié	
• régulier						Location/construction d'immeubles	XC
– matières des programmes		Direction générale	XC	Perfectionnement professionnel	XC	Protection et sécurité	XC
• professionnel		Secrétariat général	XC	Développement organisationnel	XC	– assurance, surveillance	
– ateliers		Service de la dette	X			Transfert scolaire et municipal	XC
– tronc commun		Orientation des projets éducatifs	XC			– échanges de services	
• adolescence inadaptes/douée		Politiques	XC			Communication électronique	XC
• groupes d'étudiants spéciaux		Informative	XC			– téléphone, interphone	
Classes d'accueil	XC						
Éducation permanente	XC						

II. PRÉSENTATION SCHEMATIQUE ET ÉLABORÉS POUR LES MINORITÉS DE LANGUE OFFICIELLE

A. LES MODÈLES CONSULTATIFS

Dans cette section, nous analysons le modèle des comités consultatifs comme modèle de gestion suggéré par les majorités afin d'accorder aux minorités de langue officielle un droit de regard sur la gestion de leurs programmes éducatifs. Premièrement, nous faisons état de l'importance de ce modèle et de sa fonction pour la majorité. Nous évaluons ensuite deux types de comités consultatifs servant la minorité : les comités consultatifs optionnels (Colombie-Britannique, Alberta, Saskatchewan, Manitoba, Nouvelle-Écosse, Île-du-Prince-Édouard et Terre-Neuve) et les comités consultatifs protégés de l'Ontario.

Les comités « consultatifs » sont un mécanisme de consultation et de participation dont s'est doté le système d'éducation majoritaire; ils font partie du service des relations école-milieu. Généralement mis sur pied par la commission scolaire³ ou l'école, ces comités fonctionnent sur deux plans : 1) le comité d'école, composé de parents, d'étudiants, de la direction de l'école et de représentants du corps enseignant, permet la consultation auprès de l'école; 2) le comité de parents sert de mécanisme de consultation auprès de la commission scolaire et permet aux parents d'établir une relation directe avec ses membres. C'est ce

Au Canada, aucune province ni territoire n'a adopté de loi interdisant la formation des comités de parents. Cependant, depuis 1971, le Québec a légiféré sur l'obligation d'établir des comités d'école et des comités de parents qui ont des fonctions précises. Le comité d'école sert à stimuler la participation des parents, à améliorer les services de l'école et à formuler des recommandations à l'administration quant à la qualité de l'enseignement et de la vie scolaire. Le comité de parents doit coordonner les activités des comités d'école, favoriser la participation des parents, transmettre les recommandations des comités d'école à la commission scolaire et proposer des améliorations à l'administration des écoles. Depuis 1979, le Québec a également instauré un autre mécanisme de consultation pour les parents et la communauté : les comités dits « d'orientation » dans le cadre desquels les parents peuvent participer directement à l'orientation du projet pédagogique de l'école. La formation de ces comités est obligatoire depuis l'adoption du *projet de loi n° 107* en 1984.

Les autres provinces canadiennes, soit laissent la création de ces comités au bon vouloir des commissions scolaires, soit sont silencieuses sur le sujet. Cependant, il appert, d'après les révisions scolaires récentes, que les gouvernements provinciaux tendent à favoriser de plus en plus ces comités en suggérant leur formation dans les lois et les règlements scolaires.

Tableau IV-3
Résumé des modèles de gestion, par province

Alberia	Titre du modèle :	Management of Official Minority Language Education
	Type de modèle :	Contractuel
	Proposition faite par :	L'Edmonton Catholic School District
	Date de proposition :	Le 25 juin 1987
Saskatchewan	Titre du modèle :	Une composante du système scolaire de la Saskatchewan au service des
	Type de modèle :	Fransaskois
	Proposition faite par :	Parallèle à la structure majoritaire (commissions scolaires locales assorties d'un Conseil général provincial)
	Date de proposition :	les francophones Juin 1989
Manitoba	1) Titre du modèle :	La gestion des écoles : un modèle à suivre
	Type de modèle :	Parallèle à la structure majoritaire (commission scolaire provinciale)
	Proposition faite par :	Le Comité ad hoc de planification et de gestion scolaire au Manitoba
	Date de proposition :	Janvier 1988
Ontario	1) Titre du modèle :	Représentation directe du groupe linguistique minoritaire au sein de la commission scolaire
	Type de modèle :	Représentatif
	Proposition faite par :	Le Comité d'études sur la gestion de l'éducation en langue minoritaire
	Date de proposition :	Février 1984
Québec	Titre du modèle :	Projet de loi n° 107 : Loi sur l'instruction publique
	Type de modèle :	Parallèle à la structure majoritaire (commissions scolaires linguistiques régionales)
	Proposition faite par :	Le gouvernement du Québec
	Date d'adoption par :	Le 17 décembre 1988
Ile-du-Prince-Edouard	Titre du modèle :	La gestion scolaire en milieu minoritaire francophone à l'Ile-du-Prince-Edouard
	Type de modèles :	Parallèle à la structure majoritaire (1 : commission scolaire régionale; 2 : commission scolaire minoritaire)
	Proposition faite par :	P. Arsenault à la demande de la Société Saint-Thomas d'Aquin de l'Ile-du-Prince-Edouard
	Date de proposition :	1987

Saskatchewan
Titre du modèle :
Agreement between Le conseil de l'école canadienne-française de Saskatoon Inc. and The Board of Education of the St. Paul's Roman Catholic Separate School Division # 20 of Saskatchewan
Type de modèle :
Proposition faite par :
Le St. Paul's Roman Catholic Separate School Division #20 of Saskatchewan
Date de proposition
et d'entrée en vigueur : 1982

Ontario

1) Titre du modèle :
Comité consultatif de langue française
Type de modèle :
Proposition faite par :
Le Comité mixte sur la gestion des écoles élémentaires et secondaires de langue française (Mise en vigueur par le gouvernement de l'Ontario)
Date de proposition :
Avril 1982
Le 10 juillet 1986

2) Titre du modèle :
Projet de loi n° 75
Type de modèles :
Représentatif (représentation proportionnelle et garantie)
Le comité mixte sur la gestion des écoles élémentaires et secondaires de langue française (Mise en vigueur par le gouvernement de l'Ontario)
Date de proposition :
Avril 1982
Le 10 juillet 1986

3) Titre du modèle :
Préparons l'avenir (à la suite du *projet de loi n° 75*)
Type de modèle :
Parallèle à la structure majoritaire (commission scolaire régionale)
Proposition faite par :
Communauté urbaine de Toronto
Le 23 février 1988
Date de mise en vigueur : Le 1^{er} janvier 1989

4) Titre du modèle :
Projet de loi n° 109
Type de modèle :
Parallèle à la structure majoritaire (commission scolaire linguistique régionale d'Ottawa-Carleton)
Proposition faite par :
Le Comité d'étude pour l'éducation en langue française d'Ottawa-Carleton (Mise en vigueur par le gouvernement de l'Ontario)
Date de proposition :
Décembre 1986
Le 1^{er} janvier 1989

Ile-du-Prince-Édouard

Titre du modèle :
School Act; Regulations Amendment No. EC 108/90
Type de modèle :
Parallèle à la structure majoritaire (commission scolaire linguistique provinciale)
Proposition faite par :
Le gouvernement de l'Ile-du-Prince-Édouard.
Date de proposition :
1984
Le 17 février 1990

Tout en reprenant les mêmes rubriques que celles du tableau IV-2, le tableau IV-3 fait état de six modèles proposés. Pour ce tableau, un ordre géographique d'ouest en est a été adopté afin de fournir un aperçu global de la situation d'un bout à l'autre du pays. Chacun de ces modèles fera l'objet d'une évaluation selon la procédure énoncée plus haut. Malgré les efforts déployés par les minorités, aucun modèle n'a encore été mis sur pied dans les provinces et les territoires suivants : Nouvelle-Écosse, Terre-Neuve, Territoires du Nord-Ouest et Yukon. Un modèle de quatre commissions scolaires régionales est à l'état de projet en Colombie-Britannique.

3. Conseil scolaire minoritaire et conseil scolaire linguistique régional	Nouveau-Brunswick(1981) Île-du-P.-E. (1987)**
4. Conseil scolaire linguistique régional	Île-du-P.-E.(1972) Nouveau-Brunswick(1981) Ontario (1986) Ontario(1988)
<hr/>	
* Modèle (1). Voir le tableau IV-3.	Québec (1988)
** Modèle (2). Voir le tableau IV-3.	

Les tableaux IV-2 et IV-3 complètent le tableau récapitulatif IV-1. Le tableau IV-2 présente, par ordre chronologique, les modèles actuellement en vigueur, alors que le tableau IV-3 porte sur les modèles proposés. Pour chaque province, ces tableaux précisent le titre et le type de modèle, l'individu ou l'organisme qui en fait la proposition ainsi que la date de cette proposition et (ou) de la promulgation.

Nous constatons tout d'abord que, des sept modèles en vigueur en 1989 — dont un au Nouveau-Brunswick, un en Saskatchewan, quatre en Ontario et un à l'Île-du-Prince-Édouard — le plus ancien est celui du Nouveau-Brunswick. En 1981, les recommandations du *Rapport du comité sur l'organisation et les frontières des districts scolaires au Nouveau-Brunswick* sont mises en vigueur par la formation des conseils scolaires linguistiques et l'établissement des conseils scolaires minoritaires. Un deuxième modèle est mis en vigueur en Saskatchewan en 1982, au moment où les parents de l'école canadienne-française de Saskatoon signent une entente contractuelle avec la commission scolaire catholique de la ville de Saskatoon. En 1982, en Ontario, un rapport propose la mise en application d'un modèle original : la représentation proportionnelle et garantie. Ce dernier entre en vigueur lors de la promulgation du *projet de loi n° 75* en 1986. De plus, le modèle des conseils scolaires régionaux est institué à deux reprises en Ontario : à Toronto (1986) et à Ottawa-Carleton (1989). Enfin, faisant suite à l'arrêt du *Renvoi constitutionnel* de 1988, le modèle d'une commission scolaire provinciale est mis en œuvre à l'Île-du-Prince-Édouard en 1990.

Tableau IV-2

Résumé des modèles de gestion, par province

Modèles en vigueur

Nouveau-Brunswick	Titre du modèle :	<i>Rapport du comité sur l'organisation et les frontières des districts scolaires du Nouveau-Brunswick</i>
	Type de modèle :	Parallèle à la structure majoritaire (1 : conseil scolaire minoritaire; 2 : conseil scolaire linguistique régional)
	Proposition faite par :	Le Comité sur l'organisation et les frontières des districts scolaires du Nouveau-Brunswick (Mise en vigueur par la <i>Loi scolaire</i>)
	Date de proposition :	1979
	Date de promulgation :	1981

la situation et servira de repère lors de la lecture de la section analytique. Les tableaux de cette section font donc la synthèse de la situation actuelle en ce qui a trait à la gestion scolaire par et pour les minorités.

Au tableau IV-1, tous les modèles (proposés ou en vigueur) ont été classés d'abord en fonction du type auquel ils appartiennent et ensuite selon leur origine géographique et par ordre chronologique. Ce tableau a pour but de fournir une vue d'ensemble qui démontre clairement la progression des pouvoirs de gestion des modèles conçus pour et par les minorités de langue officielle. L'ordre de présentation du tableau récapitulatif et des analyses qui en découlent est le suivant : des modèles exerçant le moins de pouvoir (les modèles consultatifs) à ceux qui offrent une autonomie complète à la minorité en regroupant le pouvoir de décision, l'autorité et les personnes touchées dans une même structure (les modèles parallèles à la structure majoritaire).

Tableau IV-1

Typologie des modèles proposés et en vigueur pour les minorités de langue officielle

A. <i>Modèles consultatifs</i>	1. Les comités consultatifs optionnels	<i>en vigueur</i> Colombie-Britannique Alberta Saskatchewan Manitoba Île-du-Prince-Édouard Nouvelle-Écosse Terre-Neuve
	2. Les comités consultatifs protégés	Ontario
B. <i>Modèles contractuels</i>	<i>en vigueur</i> Saskatchewan(1982)	proposés Alberta(1987)
	C. <i>Modèles représentatifs</i>	<i>en vigueur</i> 1. Représentation directe Ontario(1984) proposés Ontario(1986)
D. <i>Modèles parallèles à la structure majoritaire</i>	2. Représentation proportionnelle et garantie	Ontario(1986)
	1. Conseil scolaire <i>en vigueur</i>	proposés Manitoba(1988)
Ile-du-P.-É. (1990)*		
2. Conseil scolaire linguistique local assorti d'un Conseil général provincial		Saskatchewan(1989)

Ce chapitre est consacré à la description et à l'évaluation des modèles de gestion scolaire par et pour les minorités de langue officielle. Les modèles retenus pour l'analyse appartiennent à deux catégories : 1) ceux présentement en vigueur et 2) ceux encore au stade de la proposition¹. Lorsqu'un modèle a subi diverses transformations, par exemple lorsqu'il a été ultérieurement implanté sous forme de loi, nous en avons retenu la formule la plus récente. Précisons également que seuls les modèles visant directement la gestion minoritaire ont été retenus. Ainsi, la double carte scolaire actuellement en vigueur pour établir des commissions scolaires confessionnelles à Terre-Neuve, au Québec, en Ontario, en Saskatchewan et en Alberta a été exclue.

I. TYPOLOGIE DES MODÈLES ACTUELS ET PROPOSÉS

Chaque modèle a fait l'objet d'une analyse effectuée en fonction de trois séries de critères décrits dans le chapitre précédent². Au terme de cette analyse, nous avons établi une typologie des modèles de gestion en fonction du degré de pouvoir de gestion que détient la minorité. Tous les modèles analysés peuvent être classés selon l'un ou l'autre des types suivants : modèle consultatif, contractuel, représentatif ou parallèle à la structure majoritaire. C'est en fonction de cette typologie que nous présentons les résultats de notre analyse. En outre, afin d'énoncer clairement ces résultats, nous reprenons la grille d'analyse des services de la gestion décrite au Chapitre III. De nouveaux codes sont insérés dans la colonne « Catégorie ». Les codes généraux « X » et « D » précèdent les codes indiquant le type de gestion (consultation, partage ou sujet à approbation) et le niveau de responsabilité (local, régional ou provincial). « X » signifie qu'aucun pouvoir décisionnel n'est accordé alors que « D » indique que le pouvoir décisionnel est complet. Voici l'explication de ces codes :

- X : aucun pouvoir décisionnel;
- XC : aucun pouvoir décisionnel : consultation (éventuelle ou obligatoire);
- XR : responsabilité décisionnelle sujette à l'approbation majoritaire;
- XP : pouvoir décisionnel partagé;
- DL : pouvoir décisionnel : plan local;
- DR : pouvoir décisionnel : plan régional;
- DP : pouvoir décisionnel : plan provincial.

Avant de passer à l'évaluation comme telle, nous consacrons une courte section à la présentation schématique des modèles de gestion analysés qui donne un aperçu global de

- D. Les modèles parallèles à la structure majoritaire**
1. Les commissions scolaires linguistiques provinciales
 - a. Manitoba (1988)
 - b. Ile-du-Prince-Edouard (1990)
 2. Les commissions scolaires linguistiques locales assorties d'un Conseil général provincial
 - a. Saskatchewan (1989)
 3. Le conseil scolaire minoritaire et le conseil scolaire linguistique régional
 - a. Nouveau-Brunswick (1981)
 - b. Ile-du-Prince-Edouard (1987)
 4. Les commissions scolaires linguistiques régionales
 - a. Ontario : Le Conseil des écoles françaises de la communauté urbaine de Toronto (1986)
 - b. Ontario : Le Conseil scolaire de langue française pour la municipalité régionale d'Ottawa-Carleton (1988)
 - c. Québec : Les commissions scolaires linguistiques (1988)
- III. CONCLUSIONS**
- IV. RÉSUMÉ**

CHAPITRE IV

LES MODÈLES ORGANISATIONNELS : ACTUELS ET PROPOSÉS

I. TYPOLOGIE DES MODÈLES ACTUELS ET PROPOSÉS

II. PRÉSENTATION SCHEMATIQUE ET ÉVALUATION DES MODÈLES ÉLABORÉS POUR LES MINORITÉS DE LANGUE OFFICIELLE

A. Les modèles consultatifs

1. Les comités consultatifs optionnels pour les
minorités
2. Les comités consultatifs protégés

B. Les modèles contractuels

1. Le contrat de Saskatoon (Saskatchewan, 1982)
2. La proposition du Edmonton Catholic School
Board (Alberta, 1987)

C. Les modèles représentatifs

1. La représentation directe (Ontario, 1984)
2. La représentation proportionnelle et garantie
(Ontario, 1986)

CHAPITRE IV

Les modèles organisationnels : actuels et proposés

Notes

Chapitre III

1. Voir le Chapitre premier.
2. Voir d'autres exemples. Ce sont les opinions de parents francophones exprimées lors d'un sondage. Elles illustrent notamment les frustrations vécues : « La commission scolaire anglophone ne comprend pas nos besoins. Il faut toujours négocier pour obtenir la moindre chose. Il faut choisir nos propres enseignants et gérer nos services », de dire un parent. Ou encore : « Pourquoi la gestion ? Pour avoir les services que l'on veut, au lieu de cette bataille continue. [...] Pour avoir le contrôle parce que les anglophones ne sont pas sympathiques à nos besoins, à notre école. » [...] « La gestion [...] pour avoir des programmes vraiment français parce que la majorité ne comprend pas nos besoins. » (Dubé, 1988)
3. Notamment : 1) l'enseignant, 2) les finances et administration générale, 3) le personnel, 4) l'équipement, 5) la vie étudiante, 6) les relations école-milieu, 7) les activités complémentaires, 8) la programmation et 9) l'évaluation et la recherche. Voir la section intitulée « Les composantes de la gestion scolaire ».
4. Cet extrait, provenant des transcriptions d'audiences de la cour du banc de la reine en Alberta, en témoigne : "The parents became, we have noted, more interested or more involved. They have a more direct involvement. And the interest of the parents for extracurricular activities, for example, has been noted. [...] We have also noted improved academic performance in general. We have noted that the results on standardized tests have increased. [...] We can also provide a better service in remedial teaching, for example, because we hire teachers in that field which are trained in French institutions, as compared to before [...]".
5. Voir la section II de ce chapitre.
6. Voir notamment les composantes essentielles de la gestion pour les minorités dans la section III de ce chapitre.
7. Pour cette section, nous nous sommes inspirés, notamment, des études théoriques et pratiques de Leclerc (1987) et de Girard (1987).
8. Pour une description du rôle des comités d'orientation, voir au Chapitre IV, la section portant sur les commissions scolaires linguistiques du Québec.
9. Rappelons que ces objectifs sont : 1) la mise en œuvre des mesures assurant le respect des droits conférés par l'article 23, 2) l'égalité de traitement, 3) le regroupement des forces d'autorité et d'influence ainsi que des personnes touchées et 4) la prise de décisions touchant les aspects vitaux des conditions d'épanouissement de la minorité.

C. LA RÉPARTITION DES COMPOSANTES DE LA GESTION POUR LES MINORITÉS

Le tableau III-3 résume les composantes de la gestion scolaire pour les minorités. Les composantes sont réparties en trois catégories : 1) *essentielles*, 2) *optionnelles* et 3) *partagées*.

Les composantes essentielles de la gestion scolaire peuvent être réparties entre trois paliers : local, régional et provincial.

A. BILAN SOMMAIRE

Les jugements rendus par les tribunaux confirment que l'article 23 de la *Charte* confère aux minorités un droit à la gestion exclusif.

Le juge Purvis, dans l'affaire *Mahe et al.* (1987), nomme cinq champs de responsabilité gestionnelle pour la minorité. Or, ces cinq champs recourent les services que nous considérons comme essentiels : l'enseignement, les finances et l'administration générale, le personnel, la programmation, l'équipement.

B. LES PRINCIPES DEVANT GUIDER L'ELABORATION DE MODELES DE GESTION

Les objectifs visés par la gestion scolaire doivent servir de guide dans le choix des composantes nécessaires à la gestion par la minorité. Trois principes découlent de ces objectifs et influent sur les décisions concernant la répartition des composantes de la gestion et la structure scolaire à adopter pour la minorité.

1. L'homogénéité
L'*homogénéité* suppose que toute personne affectée à l'enseignement, à la gestion et à l'administration minoritaire doit *appartenir à la langue et à la culture minoritaires*. Les décisions doivent donc être prises par et pour les minorités et ce, aux trois paliers décisionnels local, régional et provincial.

2. Le regroupement géographique
L'homogénéité dépend elle-même du *regroupement géographique* de la clientèle admissible en vertu de l'article 23 de la *Charte*, regroupement qui contribue à l'efficacité de la gestion. Pour établir un ou des regroupement(s), il faut :

- a) une carte scolaire flexible pour regrouper la population minoritaire;
- b) un premier regroupement autour de l'école et de la communauté immédiate;
- c) un regroupement régional;
- d) un regroupement provincial incluant la création d'un secteur de la minorité au sein du ministère de l'Éducation.

3. Un financement adéquat

Pour que la gestion scolaire par les minorités de langue officielle soit viable, une *répartition juste et équitable* des fonds est essentielle.

6. *Le service des relations école-milieu*
Ce service comporte les mécanismes qui favorisent les rapports et la communication entre l'école et la communauté.

7. *Le service des activités complémentaires*
Ce service fournit les locaux pour la bibliothèque, la médiathèque et les services informatiques.

8. *Le service de la programmation*
Ce service essentiel s'occupe du contenu du programme de même que du rythme et des modes d'apprentissage en plus d'élaborer les programmes pédagogiques.

9. *Le service de l'évaluation et de la recherche*
Ce service alimente le système de gestion en lui fournissant des données quantitatives et qualitatives au sujet du système éducatif.

C. Les paliers décisionnels : leurs fonctions et le regroupement des services

Le palier *provincial*, soit le *ministère de l'Éducation* de chaque province, assure la qualité de l'éducation et garantit l'accès égal à l'instruction pour tout jeune citoyen. Il définit les cadres politiques, légaux, financiers ainsi que les critères d'évaluation et les programmes d'enseignement.

Au palier *régional*, les *commissions scolaires* sont organisées comme des sociétés commerciales; elles gèrent les ressources et les activités régionales en éducation. Elles sont responsables de la mise en place des neuf services susmentionnés.

Puisqu'il touche l'*école*, le palier *local* est le palier décisionnel le moins étendu mais qui rejoint plus immédiatement la clientèle cible bénéficiaire du service : les élèves et les parents. Enfin, le *système scolaire est ouvert à son environnement* et se modifie selon ses exigences : historiquement, il évolue vers une décentralisation des services et vers une plus grande autonomie locale.

III. LA GESTION SCOLAIRE POUR LES MINORITÉS DE LANGUE OFFICIELLE

Après avoir fait un bilan sommaire, nous exposerons trois principes fondamentaux d'opération. Ensuite, afin de guider l'évaluation des modèles de gestion déjà proposés ou de servir à l'élaboration de nouveaux modèles, nous répartirons les composantes de la gestion scolaire en composantes essentielles, optionnelles ou partagées.

C. Les paliers décisionnels : leurs fonctions et le regroupement des services.

A. Les limites contextuelles de la gestion scolaire

La gestion scolaire par les minorités de langue officielle s'insère dans le système de gestion provincial actuel. Sans vouloir le transformer totalement, des changements s'imposent. Certaines de ses composantes doivent être adaptées aux besoins et aux objectifs de la minorité. Pour ce faire, il faut envisager le système scolaire actuel dans son ensemble et l'adapter aux besoins de la minorité.

Le système scolaire actuel présuppose l'existence de ressources physiques, (locaux, fournitures, manuels), financières (budget) et humaines (enseignants).

La notion de « service » permet de conceptualiser le système actuel. Ce système peut être organisé en fonction des besoins et des intérêts de ses usagers.

B. Les composantes de la gestion scolaire

Le système de gestion scolaire touche neuf champs d'action ou services. Chaque service a des activités qui lui sont propres.

1. *Le service de l'enseignement*
Ce service englobe tous les services essentiels établis pour dispenser l'instruction à une clientèle diversifiée : préscolaire, élémentaire, secondaire, adulte, professionnelle, douée, inadaptee, spéciale.

2. *Le service des finances et de l'administration générale*
Ce service définit les lignes directrices de la gestion et permet une gestion complète de tous les autres services.

3. *Le service du personnel*
Ce service assure une répartition et un contrôle efficace des ressources humaines, telles les enseignants, le personnel de secrétariat, d'administration, de conciergerie, etc.

4. *Le service de l'équipement*
Ce service fournit le support matériel nécessaire aux activités pédagogiques, administratives et étudiantes.

5. *Le service de la vie étudiante*
Ce service offre aux élèves et aux parents des services qui complètent l'instruction. La cafétéria ou les résidences en sont des exemples.

d'autorité, ii) des pouvoirs d'influence et iii) de ceux qui subissent cette autorité et cette influence.

4. La prise de décisions touchant les aspects vitaux des conditions d'épanouissement de la minorité

La gestion permet un contrôle des questions essentielles telles le choix des enseignants et des programmes, les liens entre l'école et la communauté, et la répartition des budgets.

D. LES OBSTACLES

Tant les minorités que la majorité expriment certaines craintes qui constituent des obstacles à l'élaboration d'un système de gestion pour les minorités de langue officielle :

1. La capacité de gérer

C'est l'embauche d'un personnel compétent qui assure la qualité et l'efficacité de la gestion scolaire, celle de la minorité comme celle de la majorité. Les minorités n'ont donc pas à craindre d'être incapables de gérer leur système scolaire.

2. La crainte de devenir des citoyens de deuxième classe

En favorisant l'autonomie de gestion et d'instruction, les minorités ont peur de créer des ghettos de deuxième classe qui ne leur permettraient pas d'accéder à part entière aux ressources de la majorité. Pourtant, l'expérience prouve qu'une identité minoritaire forte permet un développement accru des possibilités personnelles et donc à un meilleur accès aux ressources environnantes.

3. La division entre la majorité et la minorité

La crainte d'une division pousse encore la majorité à ne pas accorder l'autonomie d'instruction et de gestion, et les minorités à ne pas la revendiquer. Or, lorsque la majorité adopte une attitude conciliante, elle favorise l'unité et permet le développement de chaque groupe.

II. LES COMPOSANTES DE LA GESTION SCOLAIRE CONTEMPORAINE

Afin de présenter comment élaborer, de façon réfléchie, un système de gestion scolaire accordant aux minorités de langue officielle les droits qui leur sont conférés par l'article 23 de la *Charte*, une description détaillée du système scolaire actuellement en vigueur s'impose :

A. les limites contextuelles de la gestion scolaire;

B. les composantes de la gestion scolaire;

transmettre leur langue et leur culture et pour transformer leur langue et leur culture en fonction de leurs besoins.

La gestion et l'instruction contribuent ainsi à la *modification d'une situation historique et contemporaine* qui a milité contre l'épanouissement des minorités.

2. Les moyens permettant à la minorité de prendre en charge son épanouissement

Outre l'épanouissement de leur langue et de leur culture, les minorités de langue officielle sont motivées par une deuxième raison dans leurs revendications : le désir d'*acquérir des moyens d'action afin de prendre en charge leur épanouissement*. C'est ce que leur permettrait le contrôle de la gestion scolaire par la minorité.

Les groupes minoritaires soumis aux décisions des commissions scolaires locales de la majorité ont présenté une série de doléances indiquant qu'ils sont parfois mal desservis par les commissions scolaires de la majorité.

En contrôlant leur système de gestion, les minorités consacraient leur temps et leur énergie à obtenir une éducation de qualité.

B. UNE DÉFINITION DE LA GESTION SCOLAIRE

La gestion scolaire par les minorités de langue officielle représente essentiellement la mise en place d'une structure administrative regroupant des personnes d'une même langue minoritaire afin qu'elles puissent prendre des décisions et exercer des pressions au profit des personnes touchées par l'éducation (parents et communauté).

C. LES OBJECTIFS VISÉS PAR LA GESTION SCOLAIRE

En revendiquant le contrôle de la gestion scolaire, les minorités de langue officielle visent quatre objectifs :

1. La mise en œuvre des mesures assurant le respect des droits conférés par l'article 23
- Comme le garantit l'article 23 de la *Charte canadienne des droits et libertés*, les minorités de langue officielle ont un droit de gestion exclusif. Les tribunaux se sont prononcés à ce sujet en Ontario, en Alberta, à l'Île-du-Prince-Édouard et en Saskatchewan.

2. L'égalité de traitement

L'égalité d'accès aux services pour la minorité ne peut être acquise que par une gestion exercée par cette même minorité.

3. Le regroupement des forces et d'autorité et d'influence ainsi que des personnes touchées

C'est vers l'homogénéité linguistique que tend le regroupement sous une même structure. En effet, cette structure assurerait l'adhésion à un même groupe linguistique : i) des forces

V. RÉSUMÉ

I. LA PROBLÉMATIQUE DE L'INSTRUCTION ET DE LA GESTION SCOLAIRE POUR LES MINORITÉS DE LANGUE OFFICIELLE

Afin de cerner la problématique entourant la reconnaissance des droits conférés par l'article 23 de la *Charte canadienne des droits et libertés*, nous présentons quatre sections touchant les notions d'instruction et de gestion pour les minorités de langue officielle :

- A. les raisons qui poussent les minorités à revendiquer leurs droits à l'instruction et à la gestion scolaire;
- B. une définition du terme « gestion »;
- C. les objectifs visés par la gestion scolaire par les minorités de langue officielle;
- D. les craintes exprimées à ce sujet constituant des obstacles à la réalisation des droits conférés par l'article 23 de la *Charte*.

Cette problématique forme la toile de fond des autres sections de ce chapitre, soit la description des composantes de la gestion scolaire et les principes régissant le choix de ces composantes pour la gestion des minorités de langue officielle.

A. LES RAISONS DES REVENDICATIONS VISANT L'INSTRUCTION ET LA GESTION SCOLAIRE

Les minorités de langue officielle revendiquent l'instruction et la gestion scolaire pour deux raisons principales : 1) l'épanouissement de la langue et de la culture minoritaires afin d'assurer la survivance et la perpétuation du groupe linguistique modifiant ainsi une situation historique et contemporaine peu favorable et 2) les moyens permettant à la minorité de prendre en charge son épanouissement.

- 1. L'épanouissement de la langue et de la culture minoritaires par la modification d'une situation historique et contemporaine peu favorable
- L'instruction et la gestion scolaire sont essentielles à l'épanouissement de la langue et de la culture minoritaires. Par « épanouissement », nous entendons la transmission et la transformation quotidienne des manières de vivre, de penser et de parler dans la famille, dans le milieu local ou dans le milieu régional, de façon à instaurer un nouveau comportement collectif.

À ce titre, l'école homogène de la minorité est appelée à remplir un rôle de premier plan, car elle est le lieu d'instruction et de gestion. Les minorités se servent de l'école pour

- iv) *au service de l'équipement* : l'administration du service;
- v) *au service de la vie étudiante* : les services de consultation et d'animation tels que l'orientation, la psychologie, l'information scolaire, les services de santé, la pastorale (s'il y a lieu) et les activités parascolaires, les critères d'admission et de présence, la surveillance quotidienne;
- vi) *au service des relations école-milieu* : le comité de parents d'école, le comité d'école et la fonction d'école communautaire;
- vii) *au service aux activités complémentaires* : la bibliothèque et le matériel audiovisuel;
- viii) *au service de la programmation* : l'élaboration de programmes répondant aux besoins de la minorité et l'évaluation de l'école;
- ix) *au service de l'évaluation et de la recherche* : l'évaluation des enseignants.

Les principes :

Ce modèle répond-il aux principes suivants ?

- 1. L'homogénéité linguistique;

- 2. le regroupement aux trois paliers décisionnels : local, régional et provincial;

- 3. le financement viable et équitable.

Les raisons intrinsèques :

Ce modèle, par son esprit et ses modalités, vise-t-il à satisfaire aux raisons intrinsèques qui poussent les minorités à revendiquer l'instruction et la gestion scolaire ?

- 1. l'épanouissement de la communauté minoritaire et la modification d'une situation historique et contemporaine peu favorable;

- 2. les moyens permettant à la minorité de prendre en charge son épanouissement.

L'épanouissement des minorités de langue officielle étant le but ultime d'une gestion efficace et exclusive, la terminologie utilisée doit en refléter les caractéristiques. Ainsi, selon les conventions contemporaines, le terme « commission scolaire » est synonyme de pouvoir de gestion. C'est l'unité la mieux connue pour refléter, dans son sens symbolique, l'unité globale de gestion équivalente aux pouvoirs de gestion de la majorité. Cette unité peut cependant prendre une structure différente, mieux adaptée à la minorité. Il n'en demeure pas moins que le principe de gestion exclusive doit subsister.

L'évaluation des modèles de gestion présentés au prochain chapitre est guidée par une série de critères qui ont été établis dans les chapitres antérieurs de cette étude. Nous les rappelons ici sous forme de questions afin de faciliter la compréhension de cette évaluation.

Les objectifs :

Ce modèle de gestion répond-il aux objectifs suivants ?

1. mettre en œuvre les mesures assurant le respect des pleins droits énoncés à l'article 23 de la *Charte canadienne des droits et libertés*;
2. assurer l'égalité de traitement entre la minorité de langue officielle et la majorité;
3. regrouper sous une même égide linguistique les trois aspects de la gestion : l'autorité, l'influence et les usagers;

4. permettre la prise de décisions touchant les aspects vitaux des conditions d'épanouissement de la minorité. En gestion, ceci signifie le pouvoir exclusif de décision sur les composantes essentielles de l'éducation, à savoir :

- i) *au service de l'enseignement* : l'enseignement préscolaire, élémentaire, secondaire général, secondaire professionnel (tronc commun), celui destiné aux groupes inadaptes ou doués;

- ii) *au service des finances et de l'administration générale* : l'administration du service, la préparation et la surveillance du budget, le contrôle interne, la paye, l'établissement des recettes à percevoir (si le système demande une levée de taxes), le conseil des commissaires ou des personnes élues ou nommées, la direction générale, le secrétariat général, l'orientation des projets éducatifs et des politiques;

- iii) *au service du personnel* : l'administration du service, l'organisation des tâches, le recrutement et la sélection du personnel surtout enseignant, le perfectionnement professionnel, l'affectation et la rémunération du personnel et son évaluation;

IV. CONCLUSIONS

Le partage des services peut s'effectuer avec les commissions scolaires environnantes (pour le transport, par exemple) ou avec des organismes communautaires (pour la location de bâtiments). La collaboration ou le partage avec le ministère de l'Éducation ont été conseillés à l'intérieur des composantes de la gestion scolaire puisque ces aspects revêtent une grande importance pour les minorités. Les groupes pourront choisir les composantes qu'il leur faut dans leur situation immédiate.

Le principe du regroupement opérant, le partage des composantes avec des organismes externes ou encore la redistribution des composantes essentielles à l'un des trois paliers décisionnels — local, régional ou provincial — peuvent varier selon les minorités et donner lieu à la création des modèles de gestion scolaire novateurs.

Pour les minorités, la gestion scolaire complète et efficace se traduit par la prise en charge de leurs commissions scolaires. Les modalités de cette responsabilité sont toutefois diverses. Le principe demeure que toutes ces nouvelles options de gestion doivent refléter les services essentiels susmentionnés.

Avant de présenter, au Chapitre IV, une évaluation des modèles de gestion mis en vigueur ou proposés pour les minorités de langue officielle, voici les conclusions tirées de la description du système de gestion idéal pour ces minorités.

Premièrement, aucun système d'éducation provincial n'est figé; tout système peut faire l'objet de changements pour accommoder les minorités de langue officielle. La grande variété des modalités et des paliers décisionnels assure la flexibilité d'un système nécessairement ouvert à son environnement. Si un système d'éducation change pour convenir aux minorités, ce ne sera la qu'une nouvelle modification parmi tant d'autres.

Deuxièmement, les grands changements effectués dans le domaine de l'éducation semblent évoluer vers une plus grande autonomie locale, ce qui permettrait aux parents de jouer un rôle plus important dans la prise de décisions sur l'éducation de leurs enfants. Les mêmes personnes exerceraient ainsi l'autorité et l'influence tout en étant directement touchées.

Troisièmement, une étude approfondie des services scolaires et des composantes de la gestion de ces services permet de définir les aspects encore méconnus de la gestion et que mêmes les minorités ont une certaine difficulté à cerner. L'information disponible n'étant pas toujours transparente, nous avons tenu dans cette étude de la rendre plus explicite.

5. Service de la vie étudiante	C o m p.	6. Service des relations-école-milieu	C o m p.	7. Service aux activités complémentaires	C o m p.	8. Service de la programmation	C o m p.	9. Service de l'évaluation et de la recherche	C o m p.
Consultation et animation	E	Comité de parents	E	Bibliothèque	E	Élaboration de programmes	E	Évaluation du rendement des étudiants	E/PM
• orientation		Comité d'école	E	Audiovisuel	E	Évaluation de l'école	E	Évaluation du système scolaire	E/PM
• psychologie		École communautaire	E	Ordinateurs et informatique	P	Évaluation du matériel didactique	PM	Évaluation des enseignants	E
• information scolaire		Comité conjoint scolaire municipal	O			Évaluation des programmes	PM	Recherche	
• service de santé						Formation pédagogique	PM		
• pastorale						Personnel du ministère	PM		
• activités étudiantes									
Fréquentation scolaire									
• admission	E								
• présences	E								
Surveillance	E								
Transport scolaire	P								
• contrats									
• transferts									
Calendrier	O								
Prêts et bourses	O/P								
Résidences	O								

* E = Composantes essentielles.

O = Composantes optionnelles.

P = Composantes partagées en vue de retenir les services d'un (d') organisme(s) non nécessairement francophone(s).

PM = Les services de la Programmation ainsi que de l'Évaluation et de la Recherche peuvent être partagés avec une division francophone du ministère de l'Éducation de la province.

Tableau III-3

Composantes* d'une gestion scolaire complète pour les minorités de langue officielle

1. Service de l'enseignement	2. Service des finances et administration générale	3. Service du personnel	4. Service de l'équipement
C o m m p.	C o m p.	C o m p.	C o m p.
Enseignement préscolaire	Administration du service	Administration du service	Administration du service
•langage, mathématique, musical, social, artistique, scientifique, physique, religieux	Budget	Organisation du travail	Approvisionnement
	Contrôle interne	Recrutement	Entretien et réparation
	Contrôle externe	et sélection	Entretien et réparation
	Paye		Entretien et réparation
Enseignement élémentaire	Perception des revenus	Affectation et rémunération	Entretien et réparation
•régulier			Entretien et réparation
•entente inadaptee/douée	Conseils des commissions et de direction (élection et(ou) nomination)	Évaluation	Entretien et réparation
Enseignement secondaire		Accréditation (provinciale)	Entretien et réparation
•régulier			Entretien et réparation
– matières des programmes	Direction générale	Perfectionnement professionnel	Entretien et réparation
•professionnel	Service de la dette	Développement organisationnel	Entretien et réparation
– ateliers	Orientation des projets éducatifs		Entretien et réparation
– tronc commun	Politiques		Entretien et réparation
•adolescence inadaptee/douée			Entretien et réparation
•groupes d'étudiants spéciaux	Informatique		Entretien et réparation
Classes d'accueil			Entretien et réparation
Éducation permanente			Entretien et réparation

2. Les composantes optionnelles

Les composantes optionnelles, qui feront l'objet de discussions communautaires et locales, sont :

- *au service de l'enseignement* : l'éducation aux adultes;
- *au service des finances et de l'administration générale* : le contrôle externe, le service de la dette (s'il y a lieu) et l'informatisation de tout le service de gestion;
- *au service du personnel* : l'accréditation qui est habituellement du domaine provincial ou ministériel et le développement organisationnel du système;
- *au service de la vie étudiante* : la cafétéria, les prêts et bourses (peuvent également être partagés avec d'autres organismes) et les résidences;
- *au service des relations école-milieu* : le comité conjoint scolaire-municipal.

3. Les composantes partagées

Quant aux composantes partagées, ce sont les suivantes :

- *au service de l'enseignement* : l'enseignement secondaire professionnel spécialisé;
- *au service des finances et de l'administration générale* : le contrôle externe et la perception des revenus, l'informatique;
- *au service de l'équipement* : l'approvisionnement, le camionnage, l'entretien et la réparation des bâtiments et des terrains, l'entretien ménager, la consommation d'énergie, la location ou la construction d'immeubles, la protection et la sécurité, la compensation scolaire et municipale, les communications électroniques;
- *au service de la vie étudiante* : le transport scolaire et les prêts et bourses;
- *au service des activités complémentaires* : les ordinateurs et l'informatique;
- *au service de la programmation* : l'évaluation du matériel didactique, la formation pédagogique, l'évaluation de programmes (en collaboration avec le personnel du ministère de l'Éducation);
- *au service de l'évaluation et de la recherche* : l'évaluation du rendement des étudiants, l'évaluation du système scolaire (en collaboration avec le ministère de l'Éducation).

L'Éducation sont indiquées par le code PM. Ce partage est délicat puisqu'il est fonction du degré de centralisation de ce ministère.

1. Les composantes essentielles

Les composantes essentielles sont :

- *au service de l'enseignement* : l'enseignement préscolaire, élémentaire, secondaire général, secondaire professionnel (tronc commun), et celui destiné aux groupes inadaptes ou doués;

- *au service des finances et de l'administration générale* : l'administration du service, la préparation et la surveillance du budget, le contrôle interne, la paye, l'établissement des revenus à percevoir (si le système demande une levée de taxes), le conseil des commissaires ou des personnes élues ou nommées, la direction générale, le secrétariat général, l'orientation des projets éducatifs et des politiques;

- *au service du personnel* : l'administration du service, l'organisation des tâches, le recrutement et la sélection du personnel surtout enseignant, le perfectionnement professionnel, l'affectation et la rémunération du personnel et son évaluation;

- *au service de l'équipement* : l'administration du service;

- *au service de la vie étudiante* : les services de consultation et d'animation tels que l'orientation, la psychologie, l'information scolaire, les services de santé, la pastorale (s'il y a lieu) et les activités parascolaires, les critères d'admission et de présence, la surveillance quotidienne;

- *au service des relations école-milieu* : le comité de parents d'élèves, le comité d'école et la fonction d'école communautaire;

- *au service des activités complémentaires* : la bibliothèque et le matériel audiovisuel;

- *au service de la programmation* : l'élaboration de programmes répondant aux besoins de la minorité et l'évaluation de l'école;

- *au service de l'évaluation et de la recherche* : l'évaluation des enseignants.

Ainsi, les composantes essentielles correspondent de façon plus détaillée aux exigences définies par diverses études (Foucher, 1987; Arsenault, 1987; Société franco-manitobaine *et al.*, 1988) ainsi qu'aux principes précités.

seraient certainement supérieurs dans certaines régions. Par contre, dans ces mêmes unités plus petites, les frais d'administration pourraient permettre des économies. Ce ne sont là que des exemples car chaque groupe minoritaire a des besoins qui lui sont propres et chaque province ou territoire possède un système de financement unique.

Cependant, la question d'un financement inférieur ou supérieur accordé aux minorités de langue officielle par rapport à celui de la majorité va de pair avec celle de l'égalité de traitement avec la majorité, égalité sans aucune forme de discrimination tel que l'énonce le paragraphe 15 (1) de la *Charte*. Par ailleurs, certains groupes, telles les minorités, ont besoin de programmes spéciaux destinés à améliorer leur situation afin d'atteindre l'égalité. À cet égard, le paragraphe 15 (2) légitime les subventions requises pour prendre des mesures spéciales souvent nécessaires pour assurer aux minorités une éducation équitable. Ainsi, le principe d'un financement adéquat signifie que ce financement doit permettre d'offrir, dans la langue de la minorité, une éducation de qualité semblable à celle de la majorité; sans discrimination et (ou) avec mesures spéciales.

Les principes que nous venons d'énoncer servent à établir la répartition des services éducatifs en services essentiels, optionnels ou encore partagés. C'est ce dont nous tirons dans la

prochaine section.

C. LA RÉPARTITION DES COMPOSANTES DE LA GESTION POUR LES MINORITÉS

La répartition des composantes des services éducatifs offerts à la majorité au regard d'une gestion minoritaire efficace et viable comporte trois volets. Ces composantes sont soit essentielles, soit optionnelles ou encore partagées.

Par *composantes essentielles*, nous entendons les champs décisionnels vitaux à l'épanouissement de la minorité. Sans ces composantes, la gestion ne peut être efficace ni atteindre les objectifs précisés.

Les services qui agréementent la vie éducationnelle mais n'en sont pas l'essence même ont été rassemblés sous la rubrique *composantes optionnelles*.

Les *composantes partagées* sont des éléments nécessaires dans tout modèle, mais il faut qu'elles puissent faire l'objet d'un achat de services ou encore d'une entente avec une autre commission scolaire ou un autre organisme. Le point crucial de toute composante partagée est celui-ci : les minorités doivent pouvoir décider quel élément du système de gestion ils veulent partager, avec qui et selon quels critères ils désirent le partager.

Le tableau III-3 résume cette répartition. Les codes utilisés sont les suivants : E (composantes essentielles), O (optionnelles) et P celles qui sont propices au partage avec des organismes minoritaires ou majoritaires. Enfin, celles qui peuvent être partagées avec le ministère de

Un second niveau de regroupement, correspondant aux commissions scolaires, réunit les forces d'autorité et d'influence sur le plan régional. Par ce regroupement, les minorités donnent un mécanisme de décision, d'autorité et peuvent présenter plus efficacement leurs besoins aux gouvernements. La formation des groupes se fait d'ailleurs à ce niveau. En effet, Dumont (1979) et Poche (1979) indiquent que c'est sur le plan régional que se crée le sentiment d'appartenance à une minorité et que s'effectue la transmission de la culture. C'est à ce niveau que les différences déterminées par la géographie et la démographie, différences entre le milieu urbain ou rural par exemple, sont vécues quotidiennement et sédimentées dans la langue et la culture.

Enfin, un troisième regroupement, qui se fait à l'échelle provinciale, permet aux minorités d'acquiescer un champ d'action plus vaste. Généralement, il peut prendre la forme d'une association scolaire; dans des provinces où la population minoritaire est moins nombreuse, il peut s'agir de commissions scolaires provinciales comportant un sous-niveau décisionnel et administratif comme cela a été proposé en Saskatchewan en 1989, au Manitoba en 1988 et, dans une certaine mesure, à l'Île-du-Prince-Édouard en 1990.

Le regroupement provincial doit également compter un bureau exclusivement réservé aux besoins de la minorité de langue officielle au sein du ministère de l'Éducation. Étant donné l'influence et le pouvoir de décision de ce palier décisionnel (voir la section précédente), les minorités ne peuvent participer à la gestion globale de leur éducation sans avoir recours à ce palier puisque c'est au ministère de l'Éducation qu'incombe la tâche de fixer les objectifs généraux de l'éducation. Si les minorités de langue officielle sont absentes des mécanismes mis en place au ministère de l'Éducation, l'orientation générale et particulière de l'éducation risque de ne jamais tenir compte de leurs besoins.

Pour être efficace, la gestion minoritaire doit donc être confiée aux trois niveaux de regroupement : le palier local, le palier régional et le palier provincial. Cependant, les composantes de la gestion peuvent être réparties de diverses manières. D'ailleurs, la flexibilité et la disponibilité, envers le milieu, du système scolaire en constante évolution, facilitent l'esprit de créativité à cet égard.

3. Le financement adéquat

Le dernier principe porte sur le financement. Sans ressources financières adéquates, aucune gestion n'est possible. Des ressources suffisantes doivent donc être remises entre les mains des minorités qui, en retour, pourront prendre des décisions en fonction des moyens dont ils disposent.

Pourtant, le financement de l'éducation minoritaire n'est pas nécessairement plus élevé que celui de l'éducation majoritaire. Selon une étude de Loken (1985), les coûts de démarrage seraient certes supérieurs, mais une fois le système établi, les coûts ne seraient pas nécessairement plus élevés. Parmi cinq catégories de coûts (l'administration, l'instruction, l'exploitation et le maintien, le transport, le capital), ceux relatifs au transport des élèves

consultatifs des commissions scolaires majoritaires. L'homogénéité crée aussi un sentiment d'appartenance à la communauté minoritaire et accélère ainsi son épanouissement.

L'homogénéité linguistique a des incidences sur l'action électorale puisqu'elle constitue le critère principal du choix de la clientèle participant aux votes et aux nominations. Des mesures doivent donc être prises pour faciliter à cet égard le choix d'appartenance à la communauté minoritaire par les individus.

Au cœur de l'école et de l'administration, l'homogénéité se traduit par l'embauche de personnes de la langue de la minorité; leur maîtrise de la langue est d'une importance cruciale puisque ces personnes en sont les modèles. Des critères d'admission à l'école sont également nécessaires.

Ainsi, la minorité elle-même est appelée à prendre des décisions. Toutefois, il n'est pas interdit de partager certains services avec d'autres groupes tels que les commissions scolaires majoritaires ou encore des organismes privés.

2. Le regroupement géographique

Le deuxième principe, celui du regroupement géographique, complète l'homogénéité linguistique. Afin que le système de gestion soit efficace en fonction de ses objectifs, un ou des regroupement(s) doivent être effectués pour concrétiser cette homogénéité linguistique. Le regroupement suppose d'abord l'établissement d'une carte scolaire qui unit les diverses communautés minoritaires, respectant ainsi la clause « là où le nombre le justifie ». En effet, un nombre suffisant, quel qu'il soit, est atteint lorsque les autorités compétentes réaménagent les frontières scolaires en fonction des bassins de population de la minorité.

Par ailleurs, le regroupement géographique se concrétise à plusieurs niveaux. Un premier niveau, le palier local, répond aux besoins immédiats de la communauté et des parents. Ce premier regroupement donne une certaine autonomie locale, nécessaire à l'épanouissement des personnes profitant du système d'éducation. De plus, le regroupement autour de l'école favorise la participation. L'école devient alors l'agent d'unité (Desjarlais, 1985). Le Comité *ad hoc* sur la gestion scolaire au Manitoba l'exprime ainsi :

Comme l'éducation est une responsabilité partagée entre l'État, la communauté et les parents, il importe de donner à ces derniers les moyens de participer activement au développement de l'orientation de l'école que fréquentent leurs enfants. La gestion de l'école par la minorité devra donc prévoir des mécanismes visant une participation accrue des parents aux niveaux local et régional. (1988, p. 41)

Le regroupement local touche les parents, l'école et la communauté.

- 4. le recrutement et l'affectation des professeurs et autres membres du personnel;
- 5. les accords relatifs aux programmes et aux services destinés aux élèves de la minorité linguistique. (p. 54)

Ces services regroupent ceux de l'enseignement (1, 3, 5), des finances et de l'administration générale (2), du personnel (2, 4), de la programmation (3) et le service de l'équipement, étant donné que le terme « établissement » se réfère aussi forcément aux locaux. Les services non mentionnés sont, d'une part, ceux considérés comme acquis car ils appartiennent nécessairement à l'école (le service à la vie étudiante, le service des relations école-milieu et le service des activités complémentaires); d'autre part, le service dont ne parle pas le juge Puvion est offert en collaboration avec le ministère de l'Éducation ou encore de façon autonome dans les grandes commissions scolaires. Il s'agit du service de l'évaluation et de la recherche.

Nous en concluons que les catégories mentionnées dans le jugement de la cour du banc de la reine en Alberta non seulement constituent le minimum d'une gestion minoritaire, mais font également office de balises en représentant les fonctions charnières de la gestion, le juge n'ayant pas, à sa portée, de grille détaillée de la gestion scolaire globale telle que nous l'avons proposée.

Pour déterminer les composantes essentielles de la gestion scolaire pour les minorités, nous nous sommes fondés sur les objectifs visés par cette gestion. De ces objectifs se dégagent également les principes qui doivent régir toute décision en matière de gestion scolaire et ainsi guider le choix de ces composantes. C'est ce dont nous tirons dans la section suivante.

B. LES PRINCIPES DEVANT GUIDER L'ÉLABORATION DE MODÈLES DE GESTION

Premièrement, trois principes fondamentaux permettent de guider l'élaboration et l'évaluation de modèles de gestion destinés à permettre l'épanouissement des minorités de langue officielle. Le premier principe, l'homogénéité linguistique, est une condition *sine qua non*. Deuxièmement, un regroupement géographique doit fournir « le nombre suffisant ». Troisièmement, la gestion doit être appuyée par des ressources financières justes et équitables. Ces principes, faisant état de prémisses opérationnelles, favorisent la mise en œuvre de l'article 23 de la Charte.

1. L'homogénéité

Par l'homogénéité linguistique, fondamentalement essentiel de la gestion minoritaire, toute personne affectée à l'enseignement et à la gestion minoritaire appartient à la langue de la minorité. Cette homogénéité permet d'atteindre les objectifs visés par l'article 23 en favorisant l'élaboration et la réalisation d'un projet éducatif répondant spécifiquement aux besoins du groupe minoritaire. Elle évite la dépense d'énergies consacrées à convaincre la majorité du bien-fondé de chaque requête comme c'est le cas lorsque la minorité participe aux comités

de l'école et de ses partenaires. Déjà, certaines études mettent en lumière que cela constitue la condition *sine qua non* à la réalisation d'une école « efficace » et ouverte sur son environnement (Goodlad, 1984). [...] Ces attentes face à une décentralisation administrative et politique véritable des lieux de décision de l'administration territoriale (et ministérielle) vers les écoles, véritables lieux de production et d'imputabilité sociales de l'organisme scolaire, constituent certainement l'un des défis majeurs de l'administration scolaire d'ici la fin des années 1980. (Pellétier, 1987, p. 42-43)

Il semble que l'avenir sera caractérisé par une plus grande autonomie locale, ce qui pourrait favoriser les parents en général et les minorités en particulier.

III. LA GESTION SCOLAIRE POUR LES MINORITÉS DE LANGUE OFFICIELLE

Faisant suite à une description des structures et des mécanismes de gestion scolaire pour la société majoritaire canadienne, nous précisons maintenant les aspects touchant plus directement les minorités de langue officielle en ce qui concerne le contrôle de la gestion scolaire. Premièrement, un bilan rappelle les questions importantes quant à la gestion pour les minorités de langue officielle. Deuxièmement, nous en déduisons les principes particuliers devant guider l'élaboration de modèles de gestion pour les minorités. Ces principes établissent également les critères principaux d'évaluation des modèles proposés et mis en vigueur que nous présentons au chapitre IV. Nous fondant sur ces principes, nous présentons, troisièmement, une répartition des composantes de la gestion scolaire qui catégorisent les services éducatifs en services essentiels, optionnels et partagés.

A. BILAN SOMMAIRE

En ce qui concerne le contrôle de la gestion scolaire par les minorités de langue officielle, rappelons qu'au minimum, un « certain degré de gestion et de contrôle quant aux programmes et aux établissements doit être garanti à la minorité linguistique » (*Mahé et al.*, 1987, p. 53). Les cinq responsabilités alors précisées par le juge Puvion reprennent cinq des neuf services décrits au tableau III-2 :

1. l'affectation des fonds prévus pour cet enseignement et pour les établissements;
2. la nomination et la direction des personnes responsables de l'administration des services d'enseignement et des établissements scolaires;
3. la création de programmes d'enseignement;

Les fonctions de la commission scolaire décrites au tableau III-2, sont vastes et exigent que l'on porte une attention particulière à la formulation de politiques régionales, à l'exécution des actions guidées par les politiques et à la supervision de ces actions.

Le corps élu (ou nommé) des commissaires scolaires embauche le personnel requis pour effectuer les fonctions qui lui incombent. Ainsi, un directeur général, qui remplit un rôle d'exécutant, s'occupe de l'administration et du fonctionnement des neuf services. En outre, un personnel divers est engagé.

3. Le palier décisionnel local

Le troisième palier décisionnel, le palier local, se retrouve à l'école. C'est habituellement la seule structure avec laquelle le public et les parents sont en interaction directe. Puisque l'école influence directement la clientèle des services d'éducation, c'est la structure la plus importante du système scolaire; mais c'est en même temps celle qui jouit de l'autorité la plus restreinte.

Une grande proportion des écoles canadiennes possède un comité consultatif de parents qui, tout comme le directeur de l'école, donnent leur point de vue, selon le cas, sur les horaires, le matériel pédagogique, les regroupements et la classification des élèves, spéciaux ou autres, l'instruction religieuse (s'il y a lieu), l'évaluation des élèves, les activités parascolaires. Ce ne sont là que des exemples puisque chaque province, chaque école est unique, fonctionne selon ses propres normes et accorde une importance différente au rôle des parents.

La notion d'école communautaire prend de plus en plus d'ampleur dans la société contemporaine. La structure des écoles communautaires du Québec est particulièrement intéressante parce qu'elle permet de conceptualiser un système qui se rapproche des besoins de la communauté. Les comités d'orientation, dont le *projet de loi n° 107* oblige la création pour chaque école, offrent une nouvelle formule de participation locale.

La principale conclusion que nous puissions tirer de cette description du système de gestion scolaire de la société majoritaire est que la gestion n'est pas un domaine figé. Elle s'adapte aux situations et aux besoins locaux. Les trois paliers susnommés sont en réalité interchangéables, malgré une structure en apparence stricte et inamovible.

L'avvenir de la gestion scolaire est encore difficile à pressentir mais on peut mettre en évidence ses principales tendances : la décentralisation et le réaménagement des pouvoirs scolaires en faveur de l'école.

De fait, l'administration scolaire des années à venir aura à composer de plus en plus avec une argumentation sociale davantage critique à l'égard des activités de l'école et de ses rapports avec la collectivité. Face à l'incertitude croissante que cette situation créera, il est probable que nous assisterons dans les prochaines années à un réaménagement des pouvoirs scolaires en faveur

5. Service de la vie étudiante	6. Service des relations-école-milieu	7. Service aux activités complémentaires	8. Service de la programmation	9. Service de l'évaluation et de la recherche
Consultation et animation <ul style="list-style-type: none"> • orientation • psychologie • information scolaire • service de santé • pastorale • activités étudiantes 	Comité de parents Comité d'école École communautaire Comité conjoint scolaire municipal	Bibliothèque Audiovisuel Ordinateurs et informatique	Élaboration de programmes Évaluation de l'école Évaluation du matériel didactique Évaluation des programmes Formation pédagogique Personnel du ministère	Évaluation du rendement des étudiants Évaluation du système scolaire Évaluation des enseignants Recherche
Fréquentation scolaire <ul style="list-style-type: none"> • admission • présences 				
Surveillance				
Transport scolaire <ul style="list-style-type: none"> • contrats • transferts 				
Cafétéria				
Prêts et bourses				
Résidences				

Tableau III-2

Composantes d'une gestion scolaire complète*

1. Service de l'enseignement	2. Service des finances et administration générale	3. Service du personnel	4. Service de l'équipement
Enseignement préscolaire <ul style="list-style-type: none"> • langage, mathématique, musical, social, artistique, scientifique, physique, religieux Enseignement élémentaire <ul style="list-style-type: none"> • régulier • enfance inadaptée/douée Enseignement secondaire <ul style="list-style-type: none"> • régulier <ul style="list-style-type: none"> – matières des programmes • professionnel <ul style="list-style-type: none"> – ateliers – tronc commun • adolescence inadaptée/douée • groupes d'étudiants spéciaux Classes d'accueil	Administration du service <ul style="list-style-type: none"> Budget Contrôle interne Contrôle externe Paye <ul style="list-style-type: none"> Perception des revenus Conseils des commissaires et de direction [élection et(ou) nomination] Direction générale <ul style="list-style-type: none"> Secrétariat général Service de la dette Orientation des projets éducatifs Politiques Informatique 	Administration du service <ul style="list-style-type: none"> Organisation du travail Recrutement et sélection Affectation et rémunération Évaluation Accréditation (provinciale) Perfectionnement professionnel Développement organisationnel 	Administration du service <ul style="list-style-type: none"> Approvisionnement Carminage Entretien et réparation <ul style="list-style-type: none"> – bâtiments, terrains Entretien ménager Consommation énergétique <ul style="list-style-type: none"> – chauffage, électricité Location/construction d'immeubles Protection et sécurité <ul style="list-style-type: none"> – assurance, surveillance Transfert scolaire et municipal – échanges de services Communication électronique <ul style="list-style-type: none"> – téléphone, interphone

* Les tableaux III-2 à IV-20 sont tirés de Martel, 1991 (adapté de Leclerc, 1987).

2. Le palier décisionnel régional

La prise de décisions à l'échelle régionale relève des *commissions scolaires*. Il n'est cependant pas exclu que le palier régional soit regroupé autour du palier local et ne concerne qu'une école, comme c'est souvent le cas dans les petites commissions scolaires. Tandis que le ministre de l'Éducation s'occupe surtout des politiques, des règlements et des lignes directrices, les commissions scolaires exécutent et mettent ces directives en pratique. Elles font aussi affaire avec les neuf services de la gestion.

Pelletier (1987) décrit ainsi la notion de commission scolaire :

L'administration de l'éducation publique sur le plan local est sous la responsabilité de commissions scolaires, véritables sociétés publiques dirigées par un conseil d'administration que l'on appelle conseil des commissaires. Ces derniers sont responsables devant leurs commettants et le gouvernement provincial de la gestion des écoles publiques de leur territoire. (p. 31)

Le territoire provincial est divisé de façon à relever de la compétence de commissions scolaires, lien entre le palier décisionnel et les personnes touchées par ces décisions. Dans certaines provinces, notamment en Ontario, en Saskatchewan et en Alberta, une double carte scolaire découpe la province; l'une concerne l'éducation publique, l'autre l'éducation confessionnelle. Au Québec, comme à Terre-Neuve, les cartes scolaires sont confessionnelles. Au Nouveau-Brunswick, une double carte scolaire divise la province en territoires anglophones et francophones. Le Québec, avec le *projet de loi n° 107*, s'oriente dans cette direction. Les cartes scolaires sont habituellement semblables, mais peuvent varier pour inclure un plus grand territoire selon le critère de regroupement choisi, soit la langue, soit la religion.

La formation des commissions scolaires diffère également selon la province. En effet, dans la majorité des provinces, les commissaires sont tous élus par les résidents adultes d'un territoire donné, alors qu'en Nouvelle-Écosse, par exemple, deux tiers des commissaires scolaires seulement sont élus. L'autorité formelle de la commission scolaire est stipulée par la loi scolaire qui établit son rôle, sa composition, le mode de sélection de ses membres, etc. On lui reconnaît deux sources d'autorité : celle d'un organisme détenteur de droits délégués par le ministre de l'Éducation ou celle d'un organisme élu selon un processus idéalement démocratique.

Les fonctions d'une commission scolaire touchent les neuf services susmentionnés. Ses tâches principales portent également sur la pédagogie, les ressources humaines, les ressources physiques et l'information. L'harmonisation des fonctions entre les commissions scolaires et le ministère de l'Éducation se fait surtout dans le domaine de l'action. Elles s'emboîtent comme dans une pyramide. Alors que le ministère de l'Éducation élabore les principes généraux et la philosophie, les commissions scolaires veillent à la prestation des services. Celles-ci agissent plus directement sur l'éducation quotidienne puisqu'elles sont les gestionnaires des écoles et des services. Elles veillent non seulement à la qualité de l'éducation, mais aussi à ce que cette éducation soit adaptée aux besoins immédiats de la clientèle locale et régionale.

décrits précédemment. Les fonctions majeures du ministère de l'Éducation peuvent être regroupées selon quatre catégories : services pédagogiques, ressources humaines, ressources financières et information.

Le ministère définit le cadre des services pédagogiques. Au minimum, les activités suivantes font partie de ses tâches :

- l'élaboration et l'approbation de programmes d'études et de guides pédagogiques;
- l'approbation du matériel didactique (manuels et matériel d'appoint);
- la description des cours optionnels, spécialisés et spéciaux;
- l'octroi de diplômes aux étudiants et de brevets aux enseignants;
- l'élaboration de politiques sur les programmes d'enseignement.

Sur le plan des ressources humaines, le ministère se charge :

- de définir, en général, les conditions dans les écoles;
- d'élaborer les politiques de formation des enseignants et de formation professionnelle;
- de mettre sur pied un réseau d'implantation de programmes.

Certains ministères vont jusqu'à négocier les conventions collectives des enseignants, notamment au Nouveau-Brunswick, à l'Île-du-Prince-Édouard, à Terre-Neuve et au Québec, alors que d'autres laissent ce soin aux instances locales ou régionales.

Les ressources matérielles sont principalement distribuées au moyen de la répartition des taxes scolaires et des ressources financières vers les paliers locaux (écoles privées) ou régionaux (commissions scolaires). Les fonctions exécutées dans le cadre des ressources matérielles sont les suivantes :

- l'élaboration des normes budgétaires pour la distribution des fonds;
- l'élaboration des normes pour l'administration des fonds par les institutions;
- l'autorisation des prêts et des projets de construction.

Enfin, le ministère de l'Éducation fait office d'agent d'information en ce qui a trait à la collecte, l'organisation, la sécurité et la diffusion des données de la gestion du système éducationnel. Son rôle est non seulement d'orienter les prises de décision, mais également de veiller à ce que les instances locales et régionales disposent de l'information nécessaire pour prendre leurs décisions.

Le ministère de l'Éducation de chaque province canadienne joue donc un rôle prépondérant dans le système de gestion de l'éducation; il guide et même oriente les prises de décision sur les plans local et régional.

Les neuf services décrits plus haut constituent l'ensemble de ce que l'on peut appeler la « gestion opérationnelle ». Afin de mieux conceptualiser les lieux où s'exerce la gestion, nous décrivons maintenant les paliers d'influence et d'autorité qui permettent d'assurer cette gestion opérationnelle.

C. LES PALIERS DÉCISIONNELS : LEURS FONCTIONS ET LE REGROUPEMENT DES SERVICES

Les services éducatifs administrés par la gestion scolaire sont répartis entre trois champs principaux que nous appelons paliers. Leurs zones d'actions et d'intérêts varient d'une province et d'une région à l'autre. Plus précisément, la quantité de services offerts par un palier ou un autre varie selon le pouvoir qui lui est conféré. Par exemple, l'évaluation de la qualité des services d'une école peut être effectuée par le ministère de l'Éducation ou encore par la commission scolaire. Un système centralisé exigera que cette évaluation soit faite par le ministère de l'Éducation, alors qu'un système décentralisé permettra aux usagers d'évaluer eux-mêmes leurs établissements. Les paliers de gestion scolaire se situent donc tous dans un continuum centralisation-décentralisation.

Une étude effectuée par Brassard et Brunet (1983) a d'ailleurs montré que le domaine de l'éducation s'adapte aux exigences du milieu pour établir une méthode de prise de décisions particulière à chaque milieu, tout en fonctionnant à l'intérieur d'un cadre commun à toute la région ou à toute la province. Cette constatation suscite deux commentaires. Premièrement, le système de gestion est suffisamment flexible pour s'adapter aux besoins et aux exigences du milieu et des personnes qu'il touche quotidiennement. Deuxièmement, la gestion par les minorités de langue officielle peut, elle aussi, être dynamique et s'acclimater au milieu sans être incongrue.

Les trois paliers décisionnels que nous décrivons sont : le palier provincial (ministère de l'Éducation), le palier régional (la commission scolaire) et le palier local (l'école). Nous en donnons une description générale permettant de situer les activités particulières habituellement associées aux prises de décision de chaque palier.

1. Le palier décisionnel provincial

Les ministères de l'Éducation de toutes les provinces ont pour tâche principale d'assurer le bon fonctionnement du système d'éducation établi par la loi scolaire. Celle-ci précise les pouvoirs et les attributions des éléments organisationnels du système scolaire : ministère, commissions scolaires, direction d'école, etc. Les ministères de l'Éducation s'assurent également que les buts et les objectifs généraux de l'éducation sont atteints. En termes plus concrets, le ministère de l'Éducation définit l'organisation des services éducatifs et ce, même dans un système décentralisé. Il établit donc les grandes lignes directrices des neuf services

et supervisés par un spécialiste. Les domaines d'activité de ce service sont les suivants :

- l'évaluation du matériel disponible et des besoins;
- l'établissement, avec le service de l'enseignement, d'un plan de développement;
- la mise sur pied d'un système d'achat et d'entreposage;
- la préparation d'horaires d'utilisation.

8. Le service de la programmation

Le service de la programmation, charnière du système scolaire, est extrêmement important puisqu'il définit le contenu de l'apprentissage. Il est chargé de *l'élaboration des programmes*, de *l'évaluation* (des programmes et du matériel didactique) et de la *formation pédagogique*. Il comprend également *l'évaluation de l'école*, laquelle doit tenir compte de l'opinion de toute personne touchée, y compris des parents. Ce service dépasse le cadre local des autres services qui sont affectés à l'école, à la communauté et à la commission scolaire : il regroupe des responsables du *ministère de l'Éducation* et des instituts de formation pédagogique. Sa présence est nécessaire et prouve que la gestion scolaire ne s'arrête pas à l'école, ni à la commission scolaire locale ou régionale. Le service de la programmation complète les services offerts par la commission scolaire locale, le ministère de l'Éducation ainsi que les instituts et les universités. Les activités de ce secteur sont les suivantes :

- l'élaboration des programmes;
- le choix du matériel didactique;
- la supervision des programmes et des cours;
- l'évaluation de l'école;
- l'animation pédagogique;
- les relations entre les commissions scolaires, le ministère de l'Éducation, et les instituts de formation pédagogique.

9. Le service de l'évaluation et de la recherche

Le neuvième et dernier service faisant partie de la gestion scolaire est celui de l'évaluation et de la recherche. On y effectue *l'évaluation du rendement des étudiants* à partir de tests valides, évaluation distincte de l'évaluation ponctuelle pratiquée à l'intérieur de toute démarche pédagogique. Ce service évalue l'efficacité du *système organisationnel*, condition nécessaire à l'amélioration de la gestion ainsi que la *compétence des enseignants*, activité qui requiert les services d'un personnel spécialisé, ou encore ceux de la direction de la commission scolaire. Enfin, *la recherche*, quelle qu'en soit la forme ou les objectifs, sert à établir l'orientation à court et à long terme dont se dotera la gestion scolaire, à veiller à la qualité de l'instruction et des services ainsi qu'à la planification à long terme.

Les activités de ce service sont les suivantes :

- l'élaboration et (ou) l'adaptation de tests standardisés;
- le recrutement de chercheurs;

Le service de la vie étudiante s'occupe notamment des domaines suivants (Girard, 1987, p. 10) :

- la détermination des besoins de la clientèle scolaire en matière d'orientation, de psychologie, de santé, de pastorale (s'il y a lieu), d'activités parascolaires;
- la diffusion de l'information sur les services offerts;
- l'élaboration de critères d'admission;
- la mise sur pied d'un système de contrôle de la fréquentation scolaire;
- l'étude des besoins des étudiants et la mise sur pied des services reliés :
 - café-étéria, résidences, prêts et bourses;
- la détermination des besoins en matière de transport scolaire;
- la marche à suivre pour négocier le(s) contrat(s) pour le transport scolaire;
- l'évaluation du système relatif au transport scolaire.

6. Le service des relations école-milieu

Un sixième service concerne les relations école-milieu, principalement composés de comités. Dans la majorité des provinces, le *comité de parents* tient lieu d'organisme consultatif et regroupe la direction de l'école et des parents élus. Le *comité de l'école* regroupe des élèves, des enseignants et la direction au sein d'un même organisme. Un troisième comité peut réunir des *représentants de la commission scolaire et du conseil municipal* pour discuter de questions communes telles les échanges de services ou encore la levée des taxes. Enfin, la notion d'*école communautaire* donne à la communauté un sens d'appartenance à l'école. Tous ces mécanismes servent à resserrer les liens entre l'école et la communauté, et cherchent à optimiser les services que l'école peut lui rendre.

Le service des relations école-milieu s'occupe notamment des domaines suivants (Girard, 1987, p. 10) :

- l'élaboration d'un programme de diffusion entre le système d'éducation et la communauté;
- l'établissement des relations avec les entreprises et les organismes;
- la mise sur pied d'un calendrier de rencontres avec les différents comités et agents du milieu;
- l'offre de locaux aux organismes du milieu;
- l'évaluation de l'efficacité du programme de communication avec la communauté.

7. Le service des activités complémentaires

Les activités complémentaires comprennent les services facilitant l'enseignement. Il s'agit de la *bibliothèque*, des *appareils audiovisuels*, des *ordinateurs* et de l'*informatique*. Ces instruments servent de véhicules au contenu des programmes d'apprentissage et sont généralement regroupés en un seul lieu (bibliothèque, médiathèque, salle d'informatique)

4. Le service de l'équipement

Le service de l'équipement vise à fournir le support matériel nécessaire aux activités pédagogiques, administratives et étudiantes. La direction générale avec les commissaires et le trésorier sont chargés de l'administration et de prendre les décisions. Par ailleurs, les grandes commissions scolaires peuvent instaurer un service administré séparément. Ce service, regroupant habituellement des spécialistes et des ouvriers s'occupe des locaux (location, construction, entretien, réparation) et des domaines reliés comme l'entretien (*ménager* (conciergerie), la consommation d'énergie (chauffage et électricité), les assurances, la surveillance, l'approvisionnement et le camionnage. Enfin, ce service veille au bon fonctionnement des communications téléphoniques ou électroniques. Tous les éléments de ce service, sauf son administration générale, peuvent être fournis par des tiers ou faire l'objet d'une entente avec d'autres organismes.

Les activités propres au service de l'équipement sont :

- la préparation d'un plan d'assistance technique à l'enseignement;
- la location, l'achat, la construction et l'entretien de locaux destinés à l'enseignement et à l'administration;
- la mise en place d'un plan de gestion et d'entretien des locaux et du matériel;
- la mise en place de procédures d'achat;
- la mise à jour des inventaires du système;
- l'étude de soumissions relatives aux assurances;
- l'organisation d'échanges de services;
- la planification des systèmes de communication selon les besoins.

Ces activités ne sont pas exclusives au service de l'équipement et peuvent faire l'objet d'échanges ou d'achats, lorsque la commission scolaire ne peut fournir le capital que requiert ce service.

5. Le service de la vie étudiante

Le cinquième service, celui de la vie étudiante, cherche à offrir aux élèves des services qui viennent compléter les services pédagogiques. Il s'agit des services de *consultation* et d'*animation* (orientation, psychologie, information scolaire, santé, pastorale et activités parascolaires), de la *surveillance quotidienne* et du *contrôle de la fréquentation scolaire*. Ces tâches sont souvent effectuées par des professionnels, des enseignants et le directeur de l'école. Les *critères d'admission* relèvent de l'administration générale et de la direction de l'école. Les modalités du *transport scolaire* des élèves et les *transferts* d'élèves entre commissions scolaires sont habituellement planifiés et autorisés par l'administration centrale, et peuvent faire l'objet d'ententes ou d'échanges. Enfin, trois composantes sont optionnelles, et dépendent des besoins spécifiques de la clientèle étudiante : la *cafétéria*, les *résidences*, les *prêts et bourses*.

Les activités du service des finances et de l'administration, décrites par Girard (1987, p. 9), s'exercent sous l'égide de la trésorerie et de la direction générale. On compte parmi ces activités :

- l'adoption de politiques devant guider les diverses interventions du personnel;
- l'élaboration d'une philosophie de l'éducation, de l'évaluation et de la programmation;
- l'élaboration d'une planification à long terme;
- la vérification de l'efficacité des politiques et des procédures mises en place;
- l'adoption d'une philosophie de gestion;
- l'élaboration d'un plan de gestion pour le système;
- la préparation d'un budget de fonctionnement et des immobilisations;
- la mise sur pied d'un système comptable et d'analyse financière;
- la préparation des états financiers.

Le service des finances et de la direction générale est le nerf central du système scolaire.

3. Le service du personnel

Le service du personnel est généralement situé dans les locaux des commissions scolaires. Sous la gouverne de la direction générale, de la direction adjointe, ou de la direction du personnel, ce secteur comprend les activités suivantes : *l'organisation des tâches, le recrutement, la sélection, l'affectation, la rémunération et l'évaluation* du personnel (enseignants, secrétariat, etc.), professionnel, spécialisé et manuel. *L'accréditation* du personnel enseignant (permis d'enseigner) est habituellement dispensée par le ministre de l'Éducation mais, dans certaines circonstances, lorsqu'il y a pénurie de personnel compétent par exemple, les commissions scolaires ont la possibilité d'embaucher des personnes non accréditées. Enfin, ce service veille au *perfectionnement professionnel* des enseignants au moyen d'ateliers ainsi qu'au *développement organisationnel* du système scolaire grâce à une planification à long terme.

Selon Girard (1987, p. 9), les activités de ce service sont généralement :

- la mise à jour des données concernant le personnel, c'est-à-dire l'ancienneté, la scolarité, l'expérience professionnelle, etc.;
- l'assignation des tâches aux diverses catégories de personnel;
- le recrutement et la sélection du nouveau personnel;
- la coordination de l'effort relatif à toutes les catégories de personnel;
- la supervision du personnel;
- la mise en place de mécanismes de motivation, de satisfaction et de qualité de la vie au travail;
- la mise en place de modalités de développement du personnel;
- l'instauration de systèmes de rémunération équitable.

Nous retrouvons également, dans plusieurs commissions scolaires offrant des services d'enseignement à la minorité de langue officielle, une quatrième clientèle, celle des classes d'accueil. Ces dernières sont d'abord au service des enfants de la minorité qui n'ont pas acquis une maîtrise suffisante de la langue d'enseignement. Des classes d'accueil préparent aussi les minorités immigrantes à entrer dans les classes régulières en français (au Québec) ou en anglais (dans les autres provinces canadiennes). Les classes d'accueil sont de nature transitoire.

L'éducation permanente n'est pas disponible dans tous les systèmes scolaires. Elle répond pourtant aux besoins grandissants d'une population adulte désirant se perfectionner ou combler les lacunes de son éducation.

Conjointement avec les autres services, les principales activités du service d'enseignement sont :

- la sélection de l'ordre de priorité et des moyens pédagogiques (par exemple, le choix du niveau d'enseignement, l'offre de cours pour élèves doués);
- l'élaboration des cours et la planification quotidienne;
- l'élaboration des horaires pour les cours, les élèves et les enseignants;
- les travaux de recherche-développement en matière d'évaluation pédagogique;
- la réorientation occasionnelle de la dimension pédagogique;
- la détermination des clientèles scolaires pour chaque année;
- la détermination des besoins pour les diverses catégories d'élèves;
- le regroupement des élèves en fonction des besoins individuels et des divers groupes;
- la préparation d'examens, l'impression des bulletins et leur distribution aux parents. (Girard, 1987, p. 8-9)

Enfin, il est clair que le lieu privilégié du service de l'enseignement est l'école.

2. Le service des finances et de l'administration générale

Ce service étant au cœur de la gestion scolaire, il se situe généralement dans les locaux administratifs d'une commission scolaire. Le service des finances, quotidiennement géré par le trésorier, équilibre les *recettes* et les *depenses*, y compris celles relatives au *financement de la dette*. La paye des employés s'effectue à partir de ce service tout comme l'*élaboration des budgets*. En outre, l'administration, sous l'égide d'une *direction générale*, veille à mettre en œuvre les *politiques et l'orientation des projets éducatifs* tels que définis par le *conseil des commissaires* (élus ou nommés) et le ministère de l'Éducation. Les *contrôles internes* sont exercés par une évaluation régulière et une prise de décision journalière. Quant aux *contrôles externes*, le service des finances et de l'administration doit soumettre ses rapports au ministère de l'Éducation de chaque province qui veille à ce que les ressources disponibles soient gérées de façon équitable et efficace.

1. Le service de l'enseignement

Le service de l'enseignement a trait à l'instruction dans son ensemble. C'est dans le cadre ce service que les élèves reçoivent leur éducation. Il est subdivisé en cinq sous-services correspondant à cinq types de clientèle.

Pour ce qui est de l'enseignement *préscolaire*, offert par ce qu'on nomme habituellement les maternelles et les prématernelles, les programmes des provinces mettent l'accent sur différentes matières. Il s'agit de l'apprentissage langagier, mathématique, musical, social, artistique, physique et religieux (s'il y a lieu). Deux provinces, le Nouveau-Brunswick, l'Île-du-Prince-Édouard, n'offrent pas de programme d'enseignement préscolaire public.

L'enseignement *élémentaire* constitue le fondement de l'apprentissage de tous les élèves; le choix des matières au programme relève du ministre provincial de l'Éducation. Le terme « élémentaire » ou « primaire » s'applique aux programmes de la 1^{re} à la 6^e année en Alberta, au Québec, au Nouveau-Brunswick, en Nouvelle-Écosse, à l'Île-du-Prince-Édouard, à Terre-Neuve, au Yukon ainsi que dans les Territoires du Nord-Ouest. En Colombie-Britannique, le terme « élémentaire » comprend également la 7^e année. En Saskatchewan, au Manitoba et en Ontario, il s'applique aux programmes de la 1^{re} à la 8^e année.

Parmi les clientèles du service de l'enseignement élémentaire, deux groupes se distinguent : l'enfance inadaptée, pour qui les services d'orthopédagogues sont nécessaires, et l'enfance douée, pour qui les pédagogues sont souvent à la recherche de programmes. Ces groupes devront faire l'objet d'une attention spéciale pour les minorités de langue officielle : souvent, en insistant des programmes d'enseignement, on tend à répondre aux besoins des plus grandes clientèles en négligeant les groupes moins nombreux.

L'enseignement *secondaire* est plus complexe et justifie particulièrement un regroupement de services à un niveau autre que le palier local. L'enseignement secondaire vise une éducation plus spécialisée. Outre la formation académique régulière, il doit également répondre aux besoins de formation professionnelle par des cours (troucs) communs pratiques et par l'enseignement en ateliers (menuiserie, soudure, cuisine, etc.). Certains grands centres peuvent offrir l'enseignement professionnel et technique dans des écoles spécialisées mais, en général, ces programmes sont offerts dans des écoles secondaires polyvalentes. Par « secondaire », on entend les programmes destinés aux élèves âgés de 12 à 16, 17 ou 18 ans. Ces programmes sont offerts de façons diverses :

- de la 7^e à la 12^e année en Alberta, au Nouveau-Brunswick, en Nouvelle-Écosse, à l'Île-du-Prince-Édouard, à Terre-Neuve, dans les Territoires du Nord-Ouest et au Yukon;
- de la 7^e à la 11^e année au Québec;
- de la 8^e à la 12^e année en Colombie-Britannique;
- de la 9^e à la 12^e année en Saskatchewan et au Manitoba;
- de la 9^e à la 12^e année (à la 13^e année avant 1990) en Ontario.

Quant aux ressources financières, elles sont composées principalement de budgets provenant de diverses sources, dont :

- les taxes;
- les subventions provinciales;
- les subventions fédérales (Programme des langues officielles dans l'enseignement du Secrétaire d'Etat du Canada, par exemple);
- les octrois pour la construction, le transport, etc.

Enfin, parmi les ressources humaines, nous comptons :

- la clientèle étudiante;
- le personnel enseignant;
- le personnel administratif;
- les parents;
- le conseil de direction;
- les fonctionnaires du ministère de l'Education.

Ces ressources sont disponibles en proportions différentes selon l'étendue du territoire desservi, les effectifs de la population desservie, ou encore les ententes et les partages avec d'autres organismes.

L'organisation de ces trois catégories de ressources gérées par un système d'éducation repose sur la notion de « service ». Cette notion permet d'affecter les ressources à la réalisation des objectifs visés et d'en faire bénéficier les personnes utilisant ce service :

Un service est « un événement ou une suite d'événements censés bénéficier à quelqu'un ». Cet événement met en œuvre des ressources (humaines, financières, physiques) dont le bénéfice revient à un usager. Au centre de ce réseau de concepts se trouve l'usager. [Si] l'on emploie des ressources sans qu'il en bénéficie, il n'y a pas de service rendu. (Churchill *et al.*, 1985, p. 23)

Cette notion de service est particulièrement importante lorsque nous envisageons un système de gestion scolaire pour les minorités. En effet, la gestion scolaire rend un service : en visant à satisfaire aux besoins et aux objectifs des minorités, elle regroupe des décideurs dont l'autorité et l'influence agissent sur un même groupe linguistique. Utiliser la notion de service permet d'adopter le point de vue des usagers. Il s'agit du point de vue qui facilite le mieux l'adaptation du système de gestion scolaire à des fins particulières. C'est d'ailleurs ce point de vue que nous adoptons dans cette section.

Les composantes de la gestion scolaire ont été résumées au tableau III-2 qui sert de document récapitulatif. Neuf services, correspondant chacun à un domaine de gestion particulier, y sont regroupés. Dans les pages qui suivent, nous décrivons chacun de ces services et en détaillons les activités.

Toutefois, cette section ne se veut pas une critique du système scolaire, mais plutôt une description exhaustive. Nous tenterons donc d'y présenter une vision d'ensemble du système actuel puisque ses composantes ne doivent pas être isolées, ni séparées les unes des autres. Cette vision, accompagnée d'une description de ses composantes, permettra aux groupes minoritaires et aux gouvernements d'en arriver à une planification unifiée.

Cependant, l'établissement d'un système de gestion scolaire pour les minorités de langue officielle demande tout de même un certain degré d'innovation puisqu'il n'existe pas encore partout au Canada. Il nécessite en outre la création de sous-systèmes répondant aux droits conférés par l'article 23 de la *Charte canadienne des droits et libertés*. Une modification du système actuel est donc requise pour satisfaire aux besoins des minorités et atteindre ainsi les objectifs exposés précédemment, soit la mise en œuvre des mesures visant à assurer le respect de leurs droits ainsi que l'égalité de traitement, le regroupement linguistique et la prise des décisions concernant les aspects vitaux de l'éducation.

La modification du système de gestion scolaire pour la minorité ne pourra pas, cependant, transformer complètement le système de la majorité. Puisqu'il est impossible de tout changer à la fois, la création (ou une certaine transformation) d'un système de gestion pour les minorités doit se faire à partir du système actuellement en vigueur dans chaque province. Nous estimons qu'une adaptation du système en vigueur et de certaines composantes en fonction des besoins et des objectifs minoritaires sera plus prudente et plus viable qu'une transformation complète. Pourtant, dans la mesure du possible, cela n'exclut nullement la nécessité d'une réflexion approfondie afin de combler les lacunes du système actuel.

Le système d'éducation actuellement en vigueur au Canada comporte donc des faiblesses qui constituent des limites auxquelles aucun sous-système conçu pour les minorités de langue officielle ne pourra échapper. Ainsi, toute innovation dans ce domaine doit prudemment s'inscrire dans une planification consciente des limites du système actuel et doit faire partie d'une vision réaliste. C'est pourquoi nous décrivons maintenant en détail les composantes du système de gestion de l'éducation actuellement en vigueur au Canada.

B. LES COMPOSANTES DE LA GESTION SCOLAIRE

En général, un système scolaire suppose l'existence de certaines ressources physiques, financières et humaines. Du côté des ressources physiques, un système scolaire doit avoir à sa disposition les éléments suivants :

- des locaux;
- des instruments pédagogiques tels que manuels, livres de bibliothèque;
- matériel audio-visuel et informatique;
- des moyens de transport;
- des instruments de communication tels que téléphone, télécopieur, etc.

ne pas aller au delà d'une redéfinition et d'une redistribution des rôles dans le système. (Harners et Blanc, 1983, p. 214)

On peut caricaturer les choses ainsi : les minorités s'affirment ou s'assimilent. Lorsqu'elles choisissent de s'affirmer, les minorités provoquent chez les gouvernements une attitude qui se traduit ou bien par la division et la confrontation ou bien par l'accommodement.

Il faut cependant préciser qu'autonomie n'est pas synonyme de division. Si la « division » exprime un climat néfaste des relations entre la majorité et sa minorité, l'« autonomie » est, par ailleurs, une condition nécessaire à l'épanouissement de cette minorité.

Nous avons décrit trois craintes empêchant les minorités de revendiquer la gestion scolaire ou encore les majorités d'accorder cette gestion. Ces craintes, bien que compréhensibles, reposent pourtant sur un manque d'information. La volonté de combler cette lacune, la volonté de savoir et de comprendre, ne feront sans doute pas disparaître ces craintes, mais elles contribueront largement à les atténuer.

II. LES COMPOSANTES DE LA GESTION SCOLAIRE CONTEMPORAINE

À ce point de notre développement, il nous paraît nécessaire de donner une description des éléments constitutifs de la gestion scolaire. En effet, cette description présente un modèle à partir duquel les minorités de langue officielle et les gouvernements provinciaux pourront élaborer des systèmes de gestion efficaces convenant à chaque province ou territoire. Aussi, dans cette section, l'accent est-il mis sur une description du système de gestion scolaire actuellement en vigueur. Premièrement, nous situons les limites générales qu'impose la nature du système d'éducation lorsque nous considérons la gestion scolaire pour les minorités. Deuxièmement, nous examinons en détail les composantes de la gestion scolaire contemporaine. Troisièmement, nous abordons les mécanismes de la gestion scolaire en décrivant ses paliers décisionnels.

A. LES LIMITES CONTEXTUELLES DE LA GESTION SCOLAIRE

Voici quelques mises en garde qui imposent des limites au degré d'innovation que peut comporter un système de gestion scolaire pour les minorités de langue officielle. Il est bien connu que le système scolaire actuel n'est pas sans failles. Ses détracteurs diront qu'il manque d'efficacité, que ses buts ne sont pas adaptés aux besoins des citoyens d'aujourd'hui ou même de demain, qu'il déshumanise les jeunes, qu'il ne répond pas aux aspirations des parents, que les décideurs ne sont pas représentatifs, etc. Comme tout système, il demande des réajustements constants en fonction des conditions nouvelles déterminées par l'histoire. Ce n'est donc pas dans un système parfait que viendra s'instaurer un sous-système d'éducation pour les minorités de langue officielle.

leurs enfants puisqu'ils ne sont pas spécialistes en la matière. À ce sujet, il faut d'abord supposer, comme le fait Arsenault, que

puisque les citoyennes et [les] citoyens de la minorité française [...] ont assumé ce droit [de gestion] et ont continué à offrir aux élèves un programme d'enseignement qui répond à leurs besoins, il faut supposer que les autres citoyennes et citoyens de cette minorité [...] pourraient eux aussi assumer et exercer leur droit de gestion à l'éducation [...]. (1987, p. 8)

Donc, si les minorités du Québec, du Nouveau-Brunswick, de l'Ontario (Toronto et Ottawa-Carleton) ou encore de l'unité n° 5 de l'Île-du-Prince-Édouard le font, les minorités de langue officielle partout au Canada devraient pouvoir gérer leur système scolaire.

De plus, les minorités peuvent se faire confiance quant à leur capacité de gestion. En effet, le système scolaire est structuré de façon à ce que les représentants de la communauté puissent être appuyés et conseillés par des spécialistes et des administrateurs. Il en est ainsi pour les membres de la majorité qui ne sont ni mieux ni moins bien placés, au départ, pour gérer un système scolaire. Ce ne sont pas les élections scolaires qui assurent une plus grande compétence, mais bien l'embauche d'un personnel qualifié. Ainsi, les minorités de langue officielle sont, *a priori*, également compétentes pour gérer leur système d'éducation.

2. La crainte de devenir des citoyens de deuxième classe

L'éventualité de devenir des citoyens de deuxième classe constitue la deuxième crainte exprimée par les membres des minorités. Mais la preuve du contraire apparaît graduellement; de plus en plus, on admet que l'éducation minoritaire n'est pas un gâchet. Et c'est là où réside le paradoxe : l'éducation minoritaire est la condition même pour devenir citoyen à part entière, une maîtrise complète de la langue de la minorité en étant la pierre angulaire.

3. La division entre la majorité et la minorité

C'est toutefois la perspective d'une profonde division entre les groupes majoritaire et minoritaire qui milite surtout contre la revendication et l'obtention du contrôle de la gestion scolaire par les minorités. La majorité, notamment par la voix de ses gouvernements provinciaux, s'inquiète; un système de gestion différent ou parallèle pour la minorité officielle fragmenterait-il l'unité sociale, économique ou politique de son territoire ?

Partout dans le monde, les revendications des minorités exigent une redistribution des ressources scolaires afin de leur en assurer une part équitable. Les gouvernements ont alors deux choix : s'y opposer ou effectuer cette redistribution. Or, de nombreuses recherches indiquent que le degré de division entre les minorités et les majorités est directement lié à l'attitude adoptée lors des revendications :

Le type et l'ampleur des revendications linguistiques d'un groupe ethnique dépendront du degré d'accommodation du groupe dominant. Si l'élite du groupe hégémonique est prête à un compromis, les revendications peuvent

Les minorités n'auront de chances égales que dans la mesure où elles pourront maîtriser leur langue maternelle. En ce sens, le rôle de l'école de la minorité est bien d'offrir un enseignement efficace de la langue minoritaire. C'est d'ailleurs uniquement dans ces conditions que les minorités peuvent aspirer au bilinguisme étant donné l'appui et la valorisation manifestes dont bénéficie la langue de la majorité.

3. Le regroupement des forces d'autorité et d'influence ainsi que des personnes touchées

Le contrôle de la gestion scolaire par la minorité vise également le regroupement. Ce regroupement se fera d'autant plus aisément qu'il se fondera sur les critères d'admissibilité de l'article 23, lequel permet l'homogénéité. Une structure de gestion scolaire efficace peut donc regrouper les forces d'autorité et d'influence ainsi que les personnes touchées au sein d'une même structure appartenant au groupe linguistique, à savoir, les parents, les élus (s'il y a lieu), les personnes nommées, la direction des écoles et des régions ainsi qu'une partie des effectifs du ministère de l'Éducation. Toutes ces personnes ont comme langue celle de la minorité.

4. La prise de décisions touchant les aspects vitaux des conditions d'épanouissement de la minorité

Le dernier objectif du contrôle de la gestion scolaire par les minorités de langue officielle porte sur la prise de décisions touchant les aspects vitaux de leurs conditions d'épanouissement. Nous énonçons ici cet objectif à titre général, toutefois, lorsque les composantes de la gestion scolaire auront été décrites, nous serons en mesure d'en fournir une définition opérationnelle.

Pour qu'une minorité puisse se prendre en charge, elle doit d'abord décider des critères d'adhésion à son groupe. Ainsi, par exemple, l'application adéquate des critères d'admissibilité aux droits conférés par l'article 23 revient au premier chef à la minorité elle-même. Par ailleurs, le contrôle de la gestion scolaire vise à préserver le champ de prise de décisions quotidienne concernant tous les autres aspects spécifiques de l'éducation qui influencent l'épanouissement de la minorité.

D. LES OBSTACLES

Toutefois, un projet scolaire de gestion par les minorités de langue officielle éveille certaines craintes dans l'esprit des parents minoritaires, des membres de l'administration (minoritaire ou majoritaire) ou de la majorité. Nous tentons de démystifier ici ces craintes puisqu'elles constituent autant d'obstacles à la réalisation de projets visant à assurer le respect des droits conférés par l'article 23.

1. La capacité de gérer

La première objection à la gestion scolaire par les minorités est d'ordre général. Elle a trait à leur capacité de gérer les établissements de la minorité. Les parents surtout se sentent mal à l'aise et mal préparés à l'idée de prendre des décisions qui toucheront l'avenir éducatif de

que les particularités du système scolaire ont pour effet d'empêcher les francophones d'accéder à l'université :

Les chances relatives des francophones d'accéder à s'inscrire aux programmes de 13^e année donnant accès aux études universitaires et aux meilleurs emplois demeurent autour de 70 p. 100 de celles des non francophones depuis près de douze ans. Ces chiffres démontrent que les mesures prises après que la réforme de 1968 [la reconnaissance des écoles françaises] avait eu son effet, n'ont pas infléchi de façon significative l'inégalité existante entre francophones et anglophones face à l'école. (1985, p. 302, souligné dans le texte)

Les causes de cette inégalité décelées par Churchill *et al.* tiennent toutes, sauf dans un cas (celui des petites écoles), aux conditions auxquelles le contrôle de la gestion par les minorités pourrait en partie remédier :

- la mauvaise qualité des services offerts en langue française;
- le manque de ressources culturelles (telles que les livres de bibliothèque en langue française);
- le besoin d'activités culturelles supplémentaires;
- la qualification des enseignants;
- la difficulté du travail en milieu bilingue.

Dans un autre exemple, il apparaît que la qualité de l'éducation minoritaire est supérieure quand la minorité est chargée de la gestion. Ainsi, des améliorations académiques ont été notées par les parents depuis que la gestion scolaire relève de la minorité francophone du Nouveau-Brunswick⁴.

Or, dans notre société, l'égalité d'accès aux services éducatifs est considérée non comme un privilège, mais comme un droit. Toute structure scolaire repose sur ce principe, qu'il s'applique aux majorités ou aux minorités. Pour la minorité comme pour la majorité, l'égalité d'accès aux services passe par le contrôle de la gestion scolaire.

La deuxième condition à l'égalité des chances consiste en un apprentissage efficace de la langue seconde, celle de la majorité. Or, cet apprentissage ne sera complet que si la langue minoritaire est maîtrisée. Nombreuses sont les études qui témoignent de ce fait : pour atteindre un bilinguisme additif, il faut avoir bien appris sa langue maternelle (Fishman, 1980; Cummins, 1984, 1986; Fitouri, 1984; Mikes, 1984; Skutnabb-Kangas, 1984; Landry et Allard, 1987). À titre d'exemple, Landry et Allard affirment :

Plusieurs recherches démontrent que donner le maximum d'enseignement dans la langue maternelle aux élèves de groupes minoritaires peut non seulement aider ceux-ci à maintenir leur langue maternelle mais également contribuer à un meilleur apprentissage de la langue seconde. (1987, p. 77)

touché par cette autorité et cette influence. Dans ces conditions, la gestion scolaire signifie l'exercice du contrôle et de l'influence au sein de neuf services³.

Dans la section suivante, cette description de la gestion scolaire sert à déterminer la nature des objectifs d'une gestion scolaire efficace en ce qui concerne les minorités de langue officielle.

C. LES OBJECTIFS VISÉS PAR LA GESTION SCOLAIRE

Les revendications pour le contrôle de la gestion scolaire comportent quatre objectifs : 1) la mise en œuvre des mesures visant à assurer le respect des droits conférés par l'article 23, 2) l'égalité de traitement avec la majorité, 3) l'homogénéité linguistique du regroupement des forces de gestion et 4) la prise de décisions touchant les aspects vitaux de l'éducation minoritaire.

1. La mise en œuvre des mesures assurant le respect des droits conférés par l'article 23
Tout d'abord, à l'alinéa 23(3)b), la *Charte* reconnaît aux parents admissibles le droit de faire instruire leurs enfants « dans des établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics ». Tel que démontré au Chapitre premier, les tribunaux de l'Ontario, de l'Alberta, de l'Île-du-Prince-Édouard et de la Saskatchewan ont confirmé, malgré des interprétations distinctes, le droit de gestion de la minorité, « là où le nombre le justifie ». L'objectif premier des revendications concernant la gestion scolaire consiste donc à établir une structure qui permette la mise en œuvre efficace des mesures assurant le respect des droits conférés. Les circonstances varient selon les provinces ou les territoires tout comme les moyens d'assurer l'exercice de la gestion, mais le droit demeure.

2. L'égalité de traitement

Le contrôle de la gestion scolaire par les minorités vise aussi l'égalité de traitement avec les membres de la majorité. Il est acquis que l'éducation tente de donner à tous une chance égale dans la société. Les minorités doivent donc avoir accès, à part égale avec les membres de la majorité, à une structure leur permettant d'accéder aux postes, aux promotions, aux universités, aux commerces, etc. Deux conditions sont nécessaires pour le leur permettre : la mise en œuvre d'un système garantissant la qualité des services dans la langue de la minorité et l'apprentissage efficace de la langue de la majorité.

L'égalité d'accès aux postes et aux promotions passe principalement par l'éducation collégiale et universitaire. En effet, on s'attend aujourd'hui à ce que l'éducation post-secondaire soit la clef du succès individuel et social. À cet égard, la situation de l'Ontario en 1985 nous fournit un exemple qui mérite réflexion, cet exemple pourrait cependant provenir de bien d'autres provinces canadiennes, surtout là où la gestion de l'éducation minoritaire relève des commissions scolaires de la majorité.

Churchill *et al.* (1985) considèrent qu'en Ontario, les francophones entreprennent des études universitaires dans des proportions nettement inférieures à celles des anglophones parce

Les motifs intrinsèques des minorités de langue officielle, étroitement liés à leur désir d'épanouissement et à celui d'acquiescer des moyens de l'accomplir, tiennent une toile de fond pour les objectifs visés par la gestion scolaire. Nous abordons cette question après avoir fourni une définition du terme « gestion » qui nous permettra d'en mieux cerner les enjeux.

B. UNE DÉFINITION DE LA GESTION SCOLAIRE

À l'inverse du mot « instruction », plus clairement défini par les tribunaux, le terme « gestion » est demeure vague et relativement inopérant en ce qui concerne les droits conférés en vertu de l'article 23. C'est cette « opérationnalisation » que nous tentons d'expliquer dans les deux prochaines sections. Nous proposons ainsi une définition de la gestion scolaire adaptable aux communautés minoritaires.

Le mot « gestion », très populaire dans notre société misant sur l'efficacité, la rentabilité et la responsabilité, fait référence à la gestion de projets, de ressources humaines, physiques, ou budgétaires. « Gestion » est souvent synonyme d'administration, de direction, d'organisation, de mandat. Chacun de ces termes indique une volonté d'obtenir et d'exercer un pouvoir de décision, que ce soit dans le domaine scolaire ou ailleurs.

Au Canada, dans le cadre du système d'éducation actuel, la gestion scolaire est fondée sur des principes démocratiques et structurels. La gestion y est donc un ensemble de rapports entre les personnes qui prennent effectivement les décisions (l'autorité), celles qui peuvent influencer ces personnes (le pouvoir d'influence) et celles dont la vie est influencée par cette autorité et ce pouvoir. Henchey et Burgess l'expliquent ainsi :

The governance of education in democratic societies today is the result of a complicated interplay among those who exercise authority (the right to make decisions), those who exercise power (the capacity to influence decisions), and those whose lives and interests are affected by this authority and power. In order to understand and to participate more effectively in this complicated process, it is important to know who exercises authority and power and how these are utilized. (1987, p. 41)

L'équilibre entre l'autorité, le pouvoir et ceux qui en subissent les conséquences est régi par des lois et des règlements scolaires. Ainsi, le système scolaire forme l'ensemble des structures administratives regroupant les forces de gestion et les personnes touchées par cette gestion. Afin d'évaluer l'efficacité du système de gestion scolaire, il faut donc savoir qui exerce l'autorité et l'influence et quelles décisions doivent être prises.

Pour les minorités de langue officielle, la gestion scolaire signifie essentiellement une adhésion des forces d'autorité et d'influence aux conditions linguistiques des personnes visées. Il s'agit alors de choisir une structure où le même groupe linguistique peut imposer l'autorité (prendre les décisions), exercer l'influence (exercer des pressions) tout en étant

Une structure de gestion où les minorités peuvent prendre les décisions et exercer leur influence est essentielle à l'épanouissement de leur langue et de leur culture. En prenant les décisions qui s'imposent, les minorités créent leur schème d'interprétation quotidien, elles se forment et se transforment.

Le désir des minorités de langue officielle d'assurer l'épanouissement de leur langue et de leur culture est exacerbé par une lacune. En effet, les revendications visant l'instruction et la gestion scolaire trouvent leur justification dans le défaut de conditions favorables : ce que la Cour suprême du Canada (1984) a appelé « une situation à réformer ». Cette situation contemporaine et historique, nous l'avons vu, était la cible même de l'article 23 de la *Charte*.

2. Les moyens d'action permettant à la minorité de prendre en charge son épanouissement

Outre l'épanouissement de leur langue et de leur culture, les minorités sont motivées dans leurs revendications par un autre désir qui touche plus particulièrement la gestion scolaire : celui d'obtenir des moyens d'action autonome plutôt que de demeurer soumis, ou encore de constamment réagir, aux décisions des autorités locales majoritaires.

Dans le Chapitre premier, nous avons noté les nombreuses doléances des communautés minoritaires face aux décisions des commissions scolaires majoritaires. Nous en voulons pour exemple le témoignage d'un parent du Nouveau-Brunswick déposé en cour du banc de la reine dans l'affaire *Mahe et al.* en 1985. Cette personne explique qu'avant l'avènement de commissions scolaires linguistiques ou minoritaires dans cette province, les parents jugeaient que les commissions scolaires de la majorité ne comprenaient pas la philosophie des écoles de la minorité. Le nouveau système de gestion fournissant à la minorité les moyens de prendre les décisions relatives à son éducation a permis de régler ces difficultés et d'harmoniser les relations entre francophones et anglophones, établissant un meilleur climat social et ce, de façon plus durable. Ainsi s'est instaurée une nouvelle paix linguistique. Les parents, tant anglophones que francophones, pouvaient désormais consacrer leurs efforts à l'éducation de leurs enfants sans passer leur temps à réagir à des décisions prises ailleurs?

En raison des difficultés qu'ils rencontrent en réagissant aux décisions des commissions scolaires de la majorité et de l'énergie qu'ils y laissent, les membres de la minorité indiquent qu'une gestion autonome est nécessaire afin de pourvoir aux besoins de leurs enfants. Une structure de gestion réaliste permet donc à la minorité de transposer l'énergie dépensée à des décisions prises ailleurs et de l'investir dans la création de conditions viables pour l'éducation. Il s'agit là d'un principe qui vise une économie de temps et d'énergie.

D'ailleurs, sans qu'il y ait mauvaise volonté de leur part, les membres de la majorité peuvent parfois douter du bien-fondé ou du choix d'appartenance à un groupe minoritaire. Il est normal que la majorité traite de façon fragmentaire les besoins des minorités, décision après décision, sans philosophie d'ensemble. Pour l'éducation, des questions se posent alors sur l'ordre des priorités, l'allocation de fonds suffisants et la création ou le maintien des écoles ainsi que l'embauche du personnel compétent. Cette situation donne donc à penser qu'effectivement seule la minorité est apte à gérer son éducation.

Sur le plan social, l'école homogène peut, dans certaines situations, contribuer directement à l'épanouissement de la communauté. Pensons notamment à ces régions où l'école vient de recevoir sa vocation officielle d'école de la minorité et de la communauté. La fierté et le dynamisme qui caractérisent alors la collectivité ne sont pas étrangers au ralliement que permet l'école.

Fishman (1980), ayant étudié les conditions qui favorisent l'épanouissement des groupes minoritaires, souligne la nécessité de sphères ou de situations dans lesquelles les minorités sont complètement séparées des influences de la majorité. Or, l'école homogène de la minorité est souvent le seul endroit où les jeunes minoritaires se retrouvent entre eux et où leur appartenance au groupe minoritaire est consolidée.

Bien que l'école homogène soit importante pour la communauté minoritaire, son rôle n'est pas exclusif; c'est là sa limite. Joshua Fishman conclut :

The school will have its role to play in the overall language maintenance design, but it will do so by serving a vibrant and purposeful community — one with a modicum of economic, and religious power of its own — rather than being called upon to do the impossible: to save the community from itself. (1980, p. 171)

Dans la même veine, Landry et Allard commentent :

Dans une communauté linguistique minoritaire, le rôle de l'école et de la famille sera d'être des « balanciers compensateurs » pour essayer d'assurer un certain équilibre à la fréquence et à l'intensité des contacts linguistiques. L'éducation en langue maternelle et l'utilisation exclusive de celle-ci au foyer devront compenser le surplus de contacts en langue seconde et devront lutter contre les effets sous-traités d'une situation de vitalité linguistique faible sur le plan communautaire. (1987, p. 77)

L'épanouissement de la minorité s'effectue dans un autre lieu contigu à l'école homogène: partout où s'exerce la gestion de cette école. La gestion scolaire permet la transmission et la transformation de la culture de référence, comme le note le juge Kerans. Ce dernier explique, dans son jugement de la cour d'appel de l'Alberta dans l'affaire *Mahé et al.*, en

l'accepte l'argument des appelants selon lequel la garantie la plus efficace contre l'assimilation est un établissement contrôlé exclusivement par ce groupe. Toute réduction de ce pouvoir aténue inévitablement le caractère exceptionnel de l'école et l'assujettit à l'influence d'une majorité insensible sinon hostile. [...] Chaque mesure de contrôle perdue représente un affaiblissement éventuel du pouvoir décisionnel qui peut contribuer à l'affaiblissement du rôle difficile de l'établissement. (p. 44)

Cet épanouissement, étant fonction de facteurs géographiques, démographiques et politiques, à la fois actuels et historiques, se présente différemment dans chaque province et territoire. Nous en donnons ici les grandes lignes. Il faudra cependant l'appliquer à la situation particulière des provinces et des territoires, telle que décrite au Chapitre II.

Par épanouissement, nous entendons, à l'instar de Dumont (1979), la transmission et la transformation quotidienne des manières de vivre, de penser et de parler dans la famille, dans le milieu régional et dans le milieu local. L'expression « épanouissement linguistique et culturel » témoigne de deux réalités. La première suit la transmission d'un héritage culturel, soit la culture de connaissance et la culture de différence (c'est-à-dire les deux premières définitions données au mot « culture » dans l'introduction de cette étude). Plus concrètement, il s'agit de l'action d'instruire. La deuxième réalité a trait à la dimension dynamique du terme « épanouissement » : le savoir culturel légué et transmis comme connaissance et différence se vit dans des conditions nouvelles et se transforme pour se conformer à la vie quotidienne dans cette nouvelle conjoncture. Elle rejoint en partie la définition de culture de différence mais surtout celle de culture de décision dans la réalité quotidienne. Aux fins de notre étude, cette notion équivaut à la « gestion ».

L'école homogène étant le principal lieu de l'instruction dans la langue de la minorité et de la gestion des services éducatifs, elle aura un rôle important à jouer dans l'épanouissement linguistique et culturel. Rappelons que « école homogène » signifie ici une école autonome dans laquelle des effectifs répondant aux critères énoncés à l'article 23 sont regroupés. Toutefois, elle peut également regrouper une clientèle qui n'est pas admissible en vertu de l'article 23 mais qui appartiennent tout de même à la langue de la minorité. C'est le cas, par exemple, d'immigrants venus de pays francophones.

Dans une société où la culture et la langue de la majorité pénètrent facilement dans les foyers par la télévision, la radio, les cassettes vidéo ou les journaux, l'école est appelée à remplir un rôle de premier plan dans l'épanouissement des communautés minoritaires. Elle vient appuyer, prolonger et même parfois remplacer le foyer.

De plus, l'école constitue une réserve de richesses culturelles pour la minorité qui, selon le contexte particulier où elle se trouve, peut ne pas avoir accès à d'autres ressources. En effet, l'école possède des ressources matérielles multimediatiques grâce auxquelles seront diffusées les richesses linguistiques et culturelles de la minorité; la bibliothèque et la multimediatique de l'école fournissent à l'enfant et même aux parents des livres, vidéos, cassettes, disquettes, etc., à apporter à la maison.

Sur le plan individuel, l'école homogène contribue au développement de l'identité sociale des enfants. Cette identité sera la même que celle des parents dans la mesure où ils apprendront à l'école la langue des parents. De fait, la transmission de la langue et de la culture de la minorité se fait plus efficacement si l'école et le foyer véhiculent les mêmes valeurs, les mêmes connaissances, le même point de vue sur le monde.

Tableau III-1

Services dans la langue de la minorité

Ces statistiques montrent que les revendications des minorités, en faveur de l'instruction dans leur langue, devraient porter fruit plus rapidement dans les provinces de l'Atlantique qu'en Colombie-Britannique par exemple. De plus, si une forte proportion de la population majoritaire doute déjà du droit à l'instruction pour la minorité de langue officielle, comme c'est le cas en Colombie-Britannique, elle hésitera d'autant plus à reconnaître le droit de cette même minorité à la gestion des services éducatifs.

Régions majoritairement anglophones (R.M.A.), Québec, Canada					
Atlan-tique	Ontario	Prairie	C.-B.	R.M.A.	Québec
Total :					
76	68	72	57	69	88
Répondants estimant que la minorité de langue officielle devrait avoir le droit de faire instruire ses enfants dans sa langue (%)					
74					

Source : *Commissionnaire aux langues officielles, Langue et Société*, n° 19, p. 43.

La problématique de l'instruction et de la gestion scolaire par les minorités de langue officielle, regroupe quatre sections : A) les raisons des revendications visant l'instruction et la gestion scolaire, B) une définition opérationnelle du terme « gestion », C) une description des objectifs visés par le contrôle de la gestion scolaire et D) une démythification des craintes régulièrement exprimées par la majorité ou par les minorités en ce qui concerne la question de la gestion scolaire.

A. LES RAISONS DES REVENDICATIONS VISANT L'INSTRUCTION ET LA GESTION SCOLAIRE

Deux raisons fondamentales poussent les minorités de langue officielle à revendiquer les droits inscrits dans la *Charte canadienne des droits et libertés* : 1) l'épanouissement de la langue et de la culture minoritaires afin d'assurer la survivance et la perpétuation du groupe linguistique, modifiant ainsi une situation historique peu favorable et 2) les moyens d'action permettant à la minorité de prendre en charge son épanouissement. La première raison touche à la fois l'instruction et la gestion scolaire, alors que la deuxième concerne essentiellement la gestion scolaire.

1. L'épanouissement de la langue et de la culture minoritaires par la modification d'une situation historique et contemporaine peu favorable

La raison la plus communément citée dans les revendications des minorités rejoint l'objectif constitutionnel de l'article 23, soit l'épanouissement de la langue et de la culture minoritaires.

Pour faire suite à la présentation des droits conférés par l'article 23 de la *Charte canadienne des droits et libertés* et aux interprétations de ces droits par les tribunaux (Chapitre premier) ainsi qu'à une description de l'état de l'éducation des minorités de langue officielle dans chaque province et territoire du Canada (Chapitre II), nous abordons maintenant la question de l'instruction et de la gestion sous l'angle des principes : ceux qui sous-tendent les revendications des minorités et ceux qui devraient guider la planification des modèles visant à assurer le respect des droits conférés.

Dans la première partie de ce chapitre, nous exposons la problématique entourant l'instruction de la minorité et sa gestion des services éducatifs. Afin de mieux définir la notion de « gestion », nous consacrons la deuxième partie à la description de ses composantes telles que contenues dans le système de gestion contemporain adopté par les groupes majoritaires. Enfin, dans la troisième partie, nous établissons un cadre théorique d'analyse en indiquant quel devrait être le contenu de la gestion scolaire ainsi que les principes en régissant le contrôle pour et par les minorités de langue officielle.

I. LA PROBLÉMATIQUE DE L'INSTRUCTION ET DE LA GESTION SCOLAIRE PAR LES MINORITÉS DE LANGUE OFFICIELLE

Les revendications des groupes minoritaires, formulées en vertu des garanties de l'article 23 de la *Charte*, comportent une définition particulière de leur vie communautaire, de l'identité psychologique de leurs enfants et du rôle de l'école. Le point de vue qui en découle est différent de celui des membres du groupe majoritaire dont l'identité personnelle est en concordance avec celle qui est constamment valorisée dans la vie publique. C'est bien entendu le point de vue de la minorité que nous tenterons de faire ressortir.

Avant de présenter les motifs qui poussent les minorités à revendiquer leurs droits à l'instruction et à la gestion scolaire, précisons que les groupes majoritaires avec lesquels elles traitent ne sont pas uniformes. C'est du moins ce que révèle un sondage effectué en 1985 par la société *Réalités* canadiennes, à la demande du Commissaire aux langues officielles, sur l'opinion des majorités anglophone (régions majoritairement anglophones) et francophone (Québec) quant au droit des minorités de langue officielle à l'instruction de leurs enfants dans leur langue. Le tableau III-1 fait état des résultats de ce sondage.

Ainsi, en 1985, 57 p. 100 des répondants de la Colombie-Britannique, considèrent que les francophones devraient avoir le droit de faire instruire leurs enfants dans leur langue; 68 p. 100 des Ontariens et 72 p. 100 des répondants des Prairies sont du même avis. Dans les provinces de l'Atlantique, 76 p. 100 sont en faveur de ce droit. Au Québec, 88 p. 100 de la majorité francophone sont en faveur du droit des membres de la minorité anglophone de faire instruire leurs enfants dans leur langue.

II.	LES COMPOSANTES DE LA GESTION SCOLAIRE CONTEMPORAINE	
	A. Les limites contextuelles de la gestion scolaire	
	B. Les composantes de la gestion scolaire	
	1. Le service de l'enseignement	
	2. Le service des finances et de l'administration	
	générale	
	3. Le service du personnel	
	4. Le service de l'équipement	
	5. Le service de la vie étudiante	
	6. Le service des relations école-milieu	
	7. Le service des activités complémentaires	
	8. Le service de la programmation	
	9. Le service de l'évaluation et de la recherche	
	C. Les paliers décisionnels : leurs fonctions et le regroupement des services	
	1. Le palier décisionnel provincial	
	2. Le palier décisionnel régional	
	3. Le palier décisionnel local	
III.	LA GESTION SCOLAIRE POUR LES MINORITÉS DE LANGUE OFFICIELLE	
	A. Bilan sommaire	
	B. Les principes devant guider l'élaboration de modèles de gestion	
	1. L'homogénéité	
	2. Le regroupement géographique	
	3. Le financement adéquat	
	C. La répartition des composantes de la gestion pour les minorités	
	1. Les composantes essentielles	
	2. Les composantes optionnelles	
	3. Les composantes partagées	
IV.	CONCLUSIONS	
V.	RÉSUMÉ	

CHAPITRE III

DE L'INSTRUCTION À LA GESTION SCOLAIRE EN MILIEU MINORITAIRE : PROBLÉMATIQUE ET COMPOSANTES

I. LA PROBLÉMATIQUE DE L'INSTRUCTION ET DE LA GESTION SCOLAIRE PAR LES MINORITÉS DE LANGUE OFFICIELLE

- A. Les raisons des revendications visant l'instruction et la gestion scolaire
1. L'épanouissement de la langue et de la culture minoritaires par la modification d'une situation historique et contemporaine peu favorable
 2. Les moyens d'action permettant à la minorité de prendre en charge son épanouissement
- B. Une définition de la gestion scolaire

- C. Les objectifs visés par la gestion scolaire
1. La mise en œuvre des mesures assurant le respect des droits conférés par l'article 23
 2. L'égalité de traitement
 3. Le regroupement des forces d'autorité et d'influence ainsi que des personnes touchées
 4. La prise de décisions touchant les aspects vitaux des conditions d'épanouissement de la minorité

- D. Les obstacles
1. La capacité de gérer
 2. La crainte de devenir des citoyens de deuxième classe
 3. La division entre la majorité et la minorité

De l'instruction à la gestion scolaire
en milieu minoritaire :
problématique et composantes

CHAPITRE III

110. Choix de langue maternelle unique française et langue maternelle double, française et anglaise. Voir la section « Aperçu » de ce chapitre pour plus de précisions quant aux choix méthodologiques de cette analyse.
111. En comptant toutes les déclarations de langue maternelle française (unique, double ou triple) des parents, cette clientèle est de 485 enfants. Par ailleurs, 400 ayants droit ont un parent dont l'unique langue maternelle est le français.
112. Choix de langue maternelle unique française et langue maternelle double, française et anglaise.
113. En comptant toutes les déclarations de langue maternelle française (unique, double ou triple) des parents, cette clientèle est de 218 enfants. Par ailleurs, 184 ayants droit ont un parent dont l'unique langue maternelle est le français.

93. Choix de langue maternelle unique française et anglaise. Voir la section « Aperçu » de ce chapitre pour plus de précisions quant aux choix méthodologiques de cette analyse.
94. Aucun enfant n'est déclaré de parent dont la langue maternelle est « le français et autre » ou encore « le français, l'anglais et autre ». Par ailleurs, 1 947 ayants droit ont un parent dont l'unique langue maternelle est le français.
95. Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
96. Lors du recensement de 1986, 8 490 personnes se disent de langue maternelle double française et anglaise. De plus, 270 personnes se sont déclarées de langue maternelle « française et autre » ou encore « française, anglaise et autre ». Ceci porte à 39 620 le nombre de personnes se déclarant de langue maternelle française, anglaise et autre ». Ceci porte à 39 620 le nombre de personnes se déclarant de langue maternelle française, anglaise et autre ».
97. Le terme « important » se réfère aux provinces dont la population de langue maternelle minoritaire représente de 4 à 10 p. 100 de la population provinciale.
98. En 1986, il n'existe aucune école privée desservant la minorité de langue française en Nouvelle-Écosse.
99. Choix de langue maternelle unique française et langue maternelle double, française et anglaise. Voir la section « Aperçu » de ce chapitre pour plus de précisions quant aux choix méthodologiques de cette analyse.
100. Toutefois, en comptant toutes les déclarations de langue maternelle française (unique, double ou triple) des parents, cette clientèle est de 10 631 enfants. Par ailleurs, 8 517 ayants droit ont un parent dont l'unique langue maternelle est le français.
101. L'alinéa 23(3)b) traite spécifiquement de ces écoles : « établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics ». Voir le Chapitre premier pour plus de détails.
102. Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
103. Lors du recensement de 1986, 1 120 personnes se disent de langue maternelle double, française et anglaise. De plus, 75 personnes se sont déclarées de langue maternelle « française et autre » ou encore « française, anglaise et autre ». Ceci porte à 3 190 le nombre de personnes se déclarant de langue maternelle française, anglaise et autre ».
104. En 1986, il n'existe aucune école privée desservant la minorité de langue française à Terre-Neuve.
105. Choix de langue maternelle unique française et langue maternelle double, française et anglaise. Voir la section « Aperçu » de ce chapitre pour plus de précisions quant aux choix méthodologiques de cette analyse.
106. En comptant toutes les déclarations de langue maternelle française (unique, double ou triple) des parents, cette clientèle est de 1 140 enfants. Par ailleurs, 856 ayants droit ont un parent dont l'unique langue maternelle est le français.
107. L'alinéa 23(3)b) traite spécifiquement de ces écoles : « établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics ». Voir le Chapitre premier pour plus de détails.
108. Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
109. Lors du recensement de 1986, 310 personnes se disent de langue maternelle double, française et anglaise. De plus, 40 personnes se sont déclarées de langue maternelle « française et autre » ou encore « française, anglaise et autre ». Ceci porte à 2 280 le nombre de personnes se déclarant de langue maternelle française, anglaise et autre ». Ceci porte à 2 280 le nombre de personnes se déclarant de langue maternelle française, anglaise et autre ».
- « Aperçu » de ce chapitre.

76. Voir, plus loin dans cette section, les données relatives aux écoles privées.
77. Nous avons également retranché la 13^e année de l'Ontario.
78. Ceci peut se justifier par le fait qu'au recensement de 1986, la population québécoise âgée de 5 ans était à peu près égale à celle de 17 ans : 94 665 comparativement à 93 245 enfants (Catalogue 93-101, tableau 4). Voir la section « Aperçu » de ce chapitre pour plus de précisions quant aux choix méthodologiques de cette analyse.
79. Choix de langue maternelle unique anglaise et langue maternelle double, français et anglais.
80. Langue maternelle unique pour les données provenant du ministère de l'Éducation du Québec.
81. Toutefois, en comptant toutes les déclarations de langue maternelle anglaise (unique, double ou triple) des parents, cette clientèle est de 130 615 enfants. Par ailleurs, 98 555 ayants droit ont un parent dont l'unique langue maternelle est l'anglais.
82. Rappelons qu'au Canada, il existe une seule école privée francophone recevant l'équivalent de 50 p. 100 des subventions versées aux écoles publiques, soit le collège Maribeu de Gravelbourg. L'Ontario possède quatre écoles privées francophones, mais elles ne sont pas subventionnées par le ministère de l'Éducation de cette province.
83. L'alinéa 23(3)b) traite spécifiquement de ces écoles : « établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics ». Voir le Chapitre premier pour plus de détails.
84. Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
85. Lors du recensement de 1986, 23 050 personnes se disent de langue maternelle double, français et anglais. De plus, 275 personnes se sont déclarées de langue maternelle « française et autre » ou encore « français, anglais et autre ». Ceci porte à 248 705 le nombre de personnes se déclarant de langue maternelle française, double ou triple. Pour plus de précision quant à la terminologie, voir la section « Aperçu » de ce chapitre.
86. Aujourd'hui, il n'existe aucune école privée francophone au Nouveau-Brunswick.
87. Choix de langue maternelle unique française et langue maternelle double, français et anglais. Voir la section « Aperçu » de ce chapitre pour plus de précisions quant aux choix méthodologiques de cette analyse.
88. Toutefois, en comptant toutes les déclarations de langue maternelle française (unique, double ou triple) des parents, cette clientèle est de 57 398 enfants. Par ailleurs, 52 686 ayants droit ont un parent dont l'unique langue maternelle est le français.
89. L'alinéa 23(3)b) traite spécifiquement de ces écoles : « établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics ». Voir le Chapitre premier pour plus de détails.
90. Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
91. Lors du recensement de 1986, 1 340 personnes se disent de langue maternelle double, français et anglais. De plus, 20 personnes se sont déclarées de langue maternelle « française et autre » ou encore « français, anglais et autre ». Ceci porte à 6 520 le nombre de personnes se déclarant de langue maternelle française, double ou triple. Pour plus de précision quant à la terminologie, voir la section « Aperçu » de ce chapitre.
92. L'alinéa 23(3)b) traite spécifiquement de ces écoles : « établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics ». Voir le Chapitre premier pour plus de détails.

60. Lors du recensement de 1986, 10 190 personnes se disent de langue maternelle double, française et anglaise. De plus, 1 250 personnes se sont déclarées de langue maternelle « française et autre » ou encore « française, anglaise et autre ». Ceci porte à 57 835 le nombre de personnes se déclarant de langue maternelle française, qu'elle soit unique, double ou triple. Pour plus de précisions quant à la terminologie, voir la section « Aperçu » de ce chapitre.
61. Le terme « important » se réfère aux provinces dont la population de langue maternelle minoritaire représente de 4 à 10 p. 100 de la population totale.
62. Choix de langue maternelle unique française et langue maternelle double, française et anglaise.
63. Toutefois, en comptant toutes les déclarations de langue maternelle française (unique, double ou triple) des parents, cette clientèle est de 18 027 enfants. Par ailleurs, 15 182 ayants droit ont un parent dont l'unique langue maternelle est le français.
64. Voir la section « Aperçu » de ce chapitre pour plus de précisions quant aux choix méthodologiques de cette analyse.
65. L'alinéa 23(3)b) traite spécifiquement de ces écoles : « établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics ». Voir le Chapitre premier pour plus de détails.
66. Voir notre analyse dans la section du Chapitre IV portant sur les modèles parallèles à la structure majoritaire.
67. Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
68. Lors du recensement de 1986, 104 550 personnes se disent de langue maternelle double, française et anglaise. De plus, 14 455 personnes se sont déclarées de langue maternelle « française et autre » ou encore « française, anglaise et autre ». Ceci porte à 543 825 le nombre de personnes se déclarant de langue maternelle française, qu'elle soit unique, double ou triple. Pour plus de précisions quant à la terminologie, voir la section « Aperçu » de ce chapitre.
69. Voir la section « Aperçu » de ce chapitre pour plus de précisions quant aux choix méthodologiques de cette analyse.
70. Choix de langue maternelle unique française et langue maternelle double, française et anglaise.
71. Toutefois, en comptant toutes les déclarations de langue maternelle française (unique, double ou triple) des parents, cette clientèle est de 138 328 enfants. Par ailleurs, 114 883 ayants droit ont un parent dont l'unique langue maternelle est le français.
72. L'alinéa 23(3)b) traite spécifiquement de ces écoles : « établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics ». Voir le Chapitre premier pour plus de détails.
73. Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
74. Lors du recensement de 1986, 150 730 personnes se disent de langue maternelle double, française et anglaise. De plus, 59 225 personnes se sont déclarées de langue maternelle « française et autre » ou encore « française, anglaise et autre ». Ceci porte à 789 985 le nombre de personnes se déclarant de langue maternelle anglaise, qu'elle soit unique, double ou triple. Pour plus de précision quant à la terminologie, voir la section « Aperçu » de ce chapitre.
75. Le jugement de la Cour suprême est explicite à cet égard : « Sans doute est-ce un régime général que le constituant a voulu instaurer au sujet de la langue de l'enseignement par l'article 23 de la *Charte* et non pas un régime particulier pour le Québec. Mais, vu l'époque où il a légiféré, et vu surtout la rédaction de l'article 23 de la *Charte* lorsqu'on la compare à celle des articles 72 et 73 de la loi 101, il saute aux yeux que le jeu combiné de ces deux derniers articles est apparu au constituant comme un archétype des régimes à réformer ou que du moins il fallait affecter et qu'il lui a inspiré en grande partie le remède prescrit pour tout le Canada par l'article 23 de la *Charte*. La cour, ayant remplacé par ce jugement la

41. L'alinéa 23(3)b) traite spécifiquement de ces écoles : « établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics ». Voir le Chapitre premier pour plus de détails.
42. Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
43. Lors du recensement de 1986, 14 150 personnes se disent de langue maternelle double, française et anglaise. De plus, 2 360 personnes se sont déclarées de langue maternelle « française et autre » ou encore « française, anglaise et autre ». Ceci porte à 64 575 le nombre de personnes se déclarant de langue maternelle française, qu'elle soit unique, double ou triple. Pour plus de précision quant à la terminologie, voir la section « Aperçu » de ce chapitre.
44. Le terme « intermédiaire » regroupe les provinces et les territoires dont la population de langue maternelle minoritaire représente de 1 à 3 p. 100 de la population totale.
45. Choix de langue maternelle unique française et langue maternelle double, française et anglaise.
46. Voir la section « Aperçu » pour plus de précisions quant aux choix méthodologiques de cette analyse.
47. Toutefois, en comptant toutes les déclarations de langue maternelle française (unique, double ou triple) des parents, cette clientèle est de 21 712 enfants. Par ailleurs, 17 800 ayants droit ont un parent dont l'unique langue maternelle est le français.
48. L'alinéa 23(3)b) traite spécifiquement de ces écoles : « établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics ». Voir le Chapitre premier pour plus de détails.
49. Voir notre analyse dans la section du Chapitre IV portant sur les modèles contractuels.
50. Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
51. Lors du recensement de 1986, 5 190 personnes se disent de langue maternelle double, française et anglaise. De plus, 690 personnes se sont déclarées de langue maternelle « française et autre » ou encore « française, anglaise et autre ». Ceci porte à 26 590 le nombre de personnes se déclarant de langue maternelle française, qu'elle soit unique, double ou triple. Pour plus de précisions quant à la terminologie, voir la section « Aperçu » de ce chapitre.
52. Le terme « intermédiaire » regroupe les provinces et les territoires dont la population de langue maternelle minoritaire représente de 1 à 3 p. 100 de la population totale.
53. Choix de langue maternelle unique française et de langue maternelle double, française et anglaise.
54. Voir la section « Aperçu » de ce chapitre pour plus de précisions quant aux choix méthodologiques de cette analyse.
55. Toutefois, en comptant toutes les déclarations de langue maternelle française (unique, double ou triple) des parents, cette clientèle est de 10 908 enfants. Par ailleurs, 9 351 ayants droit ont un parent dont l'unique langue maternelle est le français.
56. L'alinéa 23(3)b) traite spécifiquement de ces écoles : « établissements d'enseignement de la minorité linguistique financés [à même] les fonds publics ». Voir le Chapitre premier pour plus de détails.
57. Voir notre analyse dans la section du Chapitre IV portant sur les modèles contractuels.
58. Voir la section du Chapitre IV portant sur les modèles parallèles à la structure majoritaire, pour une description plus détaillée.
59. Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.

26. Voir la section sur le Québec pour plus de détails, notamment sur l'importance du secteur privé desservant la minorité anglophone et son incidence sur les données portant sur les effectifs reportés sur le nombre d'enfants de langue maternelle anglaise (colonne « d »).
27. Voir le Chapitre premier pour une description de la jurisprudence concernant l'interprétation du terme « établissement de la minorité ».
28. Rappelons ces mises en garde. Premièrement, sur le plan méthodologique, nos données sont prudentes et conservatrices. Deuxièmement, l'article 23 de la *Charte* a créé une situation nouvelle qui a fait évoluer les choses. La demande réelle pour des services scolaires aux minorités de langue officielle peut se situer au delà de l'offre réelle de ces services. Troisièmement, en vertu de leur libre choix, les parents bénéficiaires des droits de l'article 23 de la *Charte* peuvent décider d'inscrire leur(s) enfant(s) aux programmes destinés aux enfants de la majorité linguistique.
29. Toutefois, les deux groupes visés (les enfants de langue maternelle de la minorité et les enfants de parents dont la langue maternelle est celle de la minorité) sont, ici, presque complètement concordants. Ils ne le sont pas dans les seuls cas où un enfant serait de langue de la minorité sans que ce soit la langue maternelle de son père ou de sa mère. Dans les autres cas, il s'agit surtout d'assimilation à la majorité. Cette province nous fournit donc une bonne indication d'un niveau réaliste de demande de services par rapport à la clientèle éventuelle admissible, soit 80 p. 100.
30. Les précisions méthodologiques apportées à la description de la colonne « c » du tableau II-5 s'appliquent également ici, à l'exception de la définition de la langue maternelle.
31. Voir, dans ce chapitre, la description par province ou territoire.
32. Les commissions scolaires sont régies par les lois et les règlements de chacune des provinces qui les ont créées. En règle générale, elles sont chargées :
 - de la prestation de services scolaires complets;
 - de l'embauche d'un personnel compétent et de son affectation aux services;
 - de la construction, du financement ou de l'attribution des établissements scolaires adéquats;
 - de la répartition des subventions provinciales et fédérales.
33. Par exemple, le Québec est la seule province à rendre obligatoire, depuis 1971, la formation de comités d'écoute composés de parents. De plus, à la suite de la promulgation du *projet de loi n° 107* adopté en 1988, le Chapitre IV. Les autres gouvernements provinciaux n'ont pas établi de politique à cet égard ou laissent la création des comités de parents à la discrétion des commissions scolaires.
34. Pour une définition complète de ces catégories, voir le Chapitre IV.
35. Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
36. De ces personnes, 12 685 sont de langue maternelle double (française et anglaise). De plus, 3 325 personnes se sont déclarées de langue maternelle « française et autre » ou encore « française, anglaise et autre », ce qui porte à 54 250 le nombre de personnes se déclarant de langue maternelle française, qu'elle soit unique, double ou triple. Pour plus de précision quant à la terminologie, voir la section « Aperçu » de ce chapitre.
37. Le terme « intermédiaire » regroupe les provinces et les territoires dont la population de langue maternelle minoritaire représente de 1 à 3 p. 100 de la population totale.
38. Choix de langue maternelle unique française et langue maternelle double, française et anglaise.
39. Voir la section « Aperçu » pour obtenir des précisions quant aux choix méthodologiques de cette analyse.
40. Toutefois, en comptant toutes les déclarations de langue maternelle française (unique, double ou triple) des parents, cette clientèle est de 15 484 enfants. Par ailleurs, 12 627 ayants droit ont un parent dont l'unique langue maternelle est le français.

14. Cette précision méthodologique nous est dictée par l'esprit et la lettre de l'article 23 qui, en insistant sur « les fonds publics », entend fournir l'instruction aux minorités de langue officielle au sein d'un système public d'éducation. Les écoles privées sont donc exclues car, par leur définition même, elles ne sont pas entièrement subventionnées par l'État. Cette restriction a de plus grandes incidences sur les données décrivant la minorité anglophone du Québec que sur celles des minorités francophones. En effet, au Québec, il existe un réseau important d'écoles privées de langue anglaise, subventionnées jusqu'à 80 p. 100 par les fonds publics. Pour y être admis, les élèves doivent répondre aux mêmes critères d'admissibilité que ceux des écoles anglaises du réseau des commissions scolaires. À toutes fins pratiques, les écoles privées subventionnées du Québec ressemblent donc aux écoles publiques. Toutefois, ayant opté pour une approche méthodologique prudente, nous avons décidé de les exclure. Pour une analyse plus détaillée de cette question, voir la section sur le Québec dans ce chapitre.
15. Généralement, les données fournies par les ministères de l'Éducation, le Conseil des ministres de l'Éducation et Statistique Canada concordent. Lorsqu'une divergence apparaît, nous avons calculé les effectifs avec l'aide des ministères de l'Éducation afin de découvrir la source des écarts. À titre d'exemple, nous avons découvert un écart de 1 133 élèves entre les données du ministère de l'Éducation du Nouveau-Brunswick et celles de Statistique Canada, et un écart de 1 260 élèves entre les données de ce ministère et celles du Conseil des ministres de l'Éducation. Nous avons donc vérifié les écoles et les groupes d'élèves qui avaient été inclus ou exclus dans chaque compilation pour obtenir des données confirmées par le ministère de l'Éducation de cette province.
16. Ceci peut se justifier par le fait qu'au recensement de 1986, la population québécoise âgée de 5 ans était à peu près égale à celle de 17 ans : 94 665 comparativement à 93 245 enfants (Catalogue 93-101, tableau 4).
17. Dans la majorité des provinces et des territoires, cet âge est établi entre 6 et 16 ans.
18. À cause de ces deux facteurs et afin de souligner que les enfants, âgés de 6 à 17 ans, de langue maternelle de la minorité (variable « c ») ne sont pas exclusivement ceux inscrits dans les programmes de la minorité (variable « b »), nous emploierons le terme « l'équivalent de » dans nos descriptions.
19. Voir, dans ce chapitre, la section sur le Québec.
20. Les effectifs dans les programmes d'instruction de la minorité (variable « b ») étant supérieurs au nombre d'ayants droit en vertu de l'alinéa 23(1)a) qui sont réellement inscrits, nous employons le terme « l'équivalent de » dans nos descriptions.
21. La Cour suprême du Canada se prononce sur la question dans son jugement dans la cause *Mahe et al.* À ce sujet, voir l'Appendice B.
22. Les services offerts à la minorité apparaissent ainsi plus complets qu'ils ne le sont en réalité. Si nous avions exclu des effectifs tous les enfants qui ne sont pas de langue maternelle de la minorité, pour la variable « c » ou qui ne sont pas admissibles en vertu de l'article 23(1)a), pour la variable « c », ces effectifs auraient été inférieurs.
23. En effet, comme nous l'avons déjà expliqué, nous aurions pu retenir toutes les déclarations de langue maternelle que les déclarations de langue maternelle unique) contrevenirait probablement à l'esprit et à la lettre de l'article 23.
24. Dans cette province, la langue maternelle des effectifs scolaires de la minorité est le français puisque les critères d'admission exigent la réussite d'un test oral dans cette langue. Le cas du Nouveau-Brunswick confirme nos choix méthodologiques par l'équivalence presque complète entre les deux variables.
25. Selon l'échelle établie précédemment, un regroupement intermédiaire compte de 1 à 3 p. 100 de la population de langue maternelle (unique et double, française et anglaise) de la minorité par rapport à la population totale de la province; un regroupement moindre est de 0 à 1 p. 100.

Notes

Chapitre II

1. Voici des précisions quant aux termes que nous employons. « Les minorités de langue officielle » se réfèrent aux deux minorités de langue anglaise et française du Canada. Au regard de l'article 23, le mot « langue » se réfère à la langue maternelle définie comme première langue apprise et encore comprise. Nous utilisons indifféremment les termes « de langue française » et « francophone ». La « minorité de langue française ou francophone » est ici un terme générique et dénomme l'ensemble de cette minorité. Cependant, lorsque nous voulons faire ressortir le caractère hétérogène au regard des situations provinciales et territoriales de la minorité de langue française, nous employons les expressions « les minorités de langue française » ou « les minorités francophones ». Pour la minorité de langue officielle du Québec, nous employons indifféremment les termes « de langue anglaise » ou « anglophone ».
2. Ce critère, rappelons-le, est le suivant : être parent et avoir comme première langue apprise et encore comprise celle de la minorité francophone ou anglophone dans la province de résidence.
3. Nous ne fournissons pas de modèle de l'évolution de l'éducation des minorités francophones du Canada. Nous nous bornons à constater que les trois traits déterminants de cette évolution ont été vécus par chacune des minorités de langue française.
4. Une étude historique, descriptive et analytique de ces modèles est présentée au Chapitre IV.
5. Cette distinction a été faite pour la première fois en 1984.
6. Voir le Chapitre premier.
7. Pour plus de précisions, voir la section sur le Québec dans ce chapitre.
8. Si la question était portée devant les tribunaux, nous croyons que ceux-ci reconnaîtraient des droits en vertu de l'article 23 à toute personne se déclarant de langue maternelle de la minorité, que ce soit son unique langue maternelle ou qu'elle déclare posséder une langue maternelle double ou même triple.
9. Cet ensemble demeure possible dans la mesure où l'alinéa 23(1)a) n'est pas en vigueur au Québec. Voir la section sur le Québec.

10. Cette échelle a d'abord été établie hypothétiquement en regard d'une concentration autour de certains pourcentages de la population minoritaire par rapport à la population majoritaire. Par exemple, l'écart entre 35 p. 100 (Nouveau-Brunswick) et 11,2 p. 100 (Québec) indique deux catégories distinctes. Il en est de même pour l'écart entre le Québec et l'Ontario (5,8 p. 100). C'est également le cas pour l'écart entre les Territoires du Nord-Ouest et le Yukon (3 p. 100) et la Nouvelle-Écosse (4,5 p. 100), etc. L'étude de l'importance relative de chaque minorité de langue officielle a ensuite confirmé la justesse de ces regroupements.

11. Le paragraphe 16(2) de la *Charte canadienne des droits et libertés* stipule : « Le français et l'anglais sont les langues officielles du Nouveau-Brunswick; ils ont un statut et des droits et privilèges égaux quant à leur usage dans les institutions de la législature et du gouvernement du Nouveau-Brunswick. »
12. D'ailleurs, pour cette même année, dans l'ensemble des provinces et des territoires anglophones, les effectifs scolaires représentaient 19,3 p. 100 de la population de ces provinces et de ces territoires alors que ceux de la minorité francophone représentaient 16 p. 100 de la population minoritaire francophone.

13. Nos données portent principalement sur 1986, année du dernier recensement de Statistique Canada. Toutefois, nous faisons état des progrès accomplis entre 1986 et 1990 dans les sections subséquentes de ce chapitre portant sur la situation de chaque province et territoire.

En ce qui touche la gestion scolaire, aucun modèle de gestion par la minorité n'a encore été élaboré. Par ailleurs, les diverses structures scolaires devraient proposer une modification pour permettre à la minorité de prendre les décisions relatives aux services éducatifs qui lui sont offerts.

scolaires ont des pouvoirs complets sur l'éducation à l'intérieur de leur territoire. Le ministère de l'Éducation joue ailleurs un rôle d'administration de l'éducation locale.

Au Yukon, le système est centralisé. Les commissions scolaires n'existent pas encore. Actuellement, le ministère gère l'éducation de tout le territoire. Vingt-six comités scolaires, soit catholiques (deux à Whitehorse) soit publics (dix à Whitehorse et 14 dans le territoire) sont formés de membres élus au pro-rata parmi les parents des 26 écoles. Ces comités ont le pouvoir de présenter des recommandations au ministre. Un projet de révision de la loi scolaire est à l'étude pour instaurer un système de commissions scolaires.

Au ministère de l'Éducation, un service est établi pour l'enseignement en français (langue maternelle, langue seconde et immersion).

Malgré une population éparse et peu nombreuse, les francophones des Territoires du Nord-Ouest et du Yukon font des progrès sensibles. Le système actuel de gestion pourrait être mis à profit pour permettre, surtout dans les Territoires du Nord-Ouest, la gestion efficace d'une école homogène. D'ailleurs, le Rapport Perrault (1988) recommande à cet effet :

que le gouvernement des Territoires du Nord-Ouest mette sur pied un réseau scolaire français. Ce réseau serait dirigé par une commission scolaire autonome. Il devra offrir un enseignement allant de la maternelle à la fin du secondaire. Le programme français devra être dispensé par des professeurs francophones compétents et bien équipés en matériel scolaire français;

que le gouvernement territorial structure une division francophone du ministère de l'Éducation regroupant les services et les ressources de spécialistes francophones;

qu'à court terme le gouvernement des Territoires veille à augmenter de façon significative le nombre de livres et le matériel français dans les bibliothèques scolaires et municipales, et qu'à moyen terme (de deux à trois ans) on subventionne un réseau autonome de bibliothèques françaises. (1988, p. 71)

C. RÉSUMÉ

Historiquement, la minorité de langue officielle des Territoires-du Nord-Ouest et du Yukon commence à obtenir une reconnaissance de ses droits constitutionnels. Au chapitre de l'instruction, les services ne sont pas encore offerts systématiquement. Nous avons constaté qu'au Yukon, en 1986, l'équivalent de 16,7 p. 100 des enfants admissibles en vertu de l'alinéa 23(1)a) était inscrit dans un programme de la minorité. Le nombre de ces enfants est de 215 selon une compilation spéciale de Statistique Canada. Quant aux Territoires du Nord-Ouest, pour la même année, sur une clientèle admissible en vertu de l'alinéa 23(1)a) de 459 enfants, aucun enfant ne recevait l'instruction dans la langue de la minorité. Des progrès sont cependant en cours.

Tableau II-54

Écoles publiques homogènes, Yukon, 1986

Écoles homogènes*	Effectifs*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
0	0	49	0	215	0

Sources :

* Ministère de l'Éducation du Yukon.

** Voir le tableau II-5.

2. Description du système scolaire

En général, le système scolaire du Grand Nord canadien est centralisé mais permet tout de même une certaine autonomie locale, surtout dans les Territoires du Nord-Ouest. Dans ce territoire, le ministère de l'Éducation fait office d'organisme offrant des services, établissant des lignes directrices et surveillant l'autonomie relative de quatre types d'organismes de gestion scolaire. Les droits confessionnels sont reconnus.

Au palier local ou régional (paliers qui n'en forment souvent qu'un seul), il existe quatre types de gestion scolaire. Deux commissions scolaires de Yellowknife (catholique et publique) sont responsables de l'éducation pour tout le territoire relevant de leur compétence et accomplissent les tâches et les devoirs qui sont traditionnellement confiés à cette entité de gestion : l'embauche des enseignants, la préparation d'un budget, l'imposition des taxes, etc. Les membres de la commission sont élus.

Les trois « conseils de division » regroupant les territoires centrés à Copernimine, à Igaiuit et à Baker Lake s'occupent de l'éducation sur une vaste étendue. Les membres de ces conseils sont élus parmi les 21 conseils d'éducation (locaux). Ils remplissent les mêmes tâches que les commissions scolaires à l'exception de la rémunération des enseignants qui, elle, est du ressort du ministère de l'Éducation.

Le troisième type de gestion s'appelle « Education Society ». Il s'agit de sept sociétés incorporées et composées de sept membres élus parmi la population locale. Elles assument des responsabilités concernant le fonctionnement d'une école. Ce type de conseil n'embauche pas les enseignants mais veille à l'entretien et à la réparation des locaux.

Enfin, l'entité de gestion la plus fréquente est le « comité d'éducation ». Ces 22 comités sont élus par les membres de la communauté et ont une fonction de conseil et de consultation auprès des quatre surintendants du ministère de l'Éducation.

Ainsi, le système de gestion de l'éducation des Territoires du Nord-Ouest se fonde sur un vaste réseau local de consultation et (ou) de décisions partielles. Seules deux commissions

Au Yukon, le choix de la langue d'enseignement est laissé aux trois surintendants représentant le ministre de l'Éducation. Des efforts sont faits pour permettre l'hébergement et le transport des élèves de la minorité de langue française admissibles en vertu de l'article 23 et habitant dans des régions éloignées de Whitehorse.

En 1986, selon le ministère de l'Éducation du Yukon, deux écoles de Whitehorse dispensent l'instruction à 36 élèves de la minorité francophone de la 1^{re} à la 9^e année (Whitehorse Elementary School et J.A. Jeckell Junior High School). Ces effectifs représentent l'équivalent de 73,5 p. 100 des enfants d'âge scolaire (de 6 à 17 ans) dont le français est la langue maternelle¹², soit 49 enfants, mais seulement l'équivalent de 16,7 p. 100 des 215¹³ enfants admissibles en vertu de l'alinéa 23(1a) (tableau II-53). Ces chiffres indiquent également un taux élevé d'assimilation puisque seul l'équivalent de 22,7 p. 100 des enfants apprend la langue maternelle française d'un ou des deux parents.

Des progrès se sont cependant fait sentir depuis 1986. En effet, même s'il n'y a pas d'école homogène en 1986 (tableau II-54), en 1988-1989 à Whitehorse, une de ces écoles est à la veille d'être établie. Au total, 55 élèves reçoivent l'instruction dans des locaux de trois écoles anglophones ou d'immersion, mais un regroupement administratif des élèves de la maternelle à la 12^e année est déjà effectué et un regroupement physique est prévu. C'est ainsi que sera mise sur pied l'école Emille-Tremblay, la première école homogène française du Yukon. Compte tenu des inscriptions actuelles, cette école se placerait au 21^e rang des 26 écoles du territoire. C'est dire que cinq écoles anglophones ont un nombre d'inscriptions inférieur : le ministère favorise donc le maintien des écoles pour les communautés moins nombreuses.

Une prévision statistique permet de dire qu'en 1992, au Yukon, la population des enfants admissibles en vertu de l'alinéa 23(1a) pourrait s'élever à 258 enfants, soit 20 p. 100 de plus qu'en 1986.

Tableau II-53

Écoles publiques dispensant l'instruction à la minorité, Yukon, 1986

Écoles*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs I.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
2	36	49	73,5	215	16,7

Sources :

* Ministère de l'Éducation du Yukon et Conseil des ministres de l'Éducation du Yukon. Rapport de l'enseignement en français et en anglais en milieu minoritaire, 1989.

** Voir le tableau II-5.

En 1986, toujours dans les Territoires du Nord-Ouest, alors que la population d'âge scolaire de langue maternelle française¹⁰ s'élève à 119 enfants, aucun programme d'instruction n'est disponible. Le nombre des enfants de 6 à 17 ans admissibles à l'instruction dans la langue de la minorité en vertu de l'alinéa 23(1)a) est établi à 459¹¹ (tableau II-51). Conséquemment, aucune école homogène n'est disponible en 1986 (tableau II-52) et aucune n'est prévue dans un avenir rapproché.

Quoique les données de 1986-1987 n'indiquent aucun service éducatif à la minorité de langue française, depuis lors des progrès ont été réalisés dans les Territoires du Nord-Ouest. En 1988-1989, trois écoles dispensent l'instruction à la minorité francophone : deux écoles d'Iqaluit ainsi qu'une école de Nanisivit offrent l'instruction de la 1^{re} à la 12^e année. Ces écoles non homogènes offrent l'instruction dans la langue de la minorité francophone à un total de 43 élèves. À Yellowknife, 30 francophones de la maternelle à la 1^{re} année sont intégrés dans les écoles d'immersion mais reçoivent un programme spécial en français. En nous fondant sur la compilation spéciale de Statistique Canada (1988), nous pouvons prévoir qu'en 1992 la clientèle admissible en vertu de l'alinéa 23(1)a) s'élèvera à 519 enfants de 6 à 17 ans, soit 13,0 p. 100 de plus qu'en 1986. Il est donc important de prévoir des services éducatifs pour cette population.

Tableau II-51

Écoles publiques dispensant l'instruction à la minorité, Territoires du Nord-Ouest, 1986

Écoles*	Effectifs (1 ^{re} à 9 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
0	0	119	0	459	0

Sources :

* Conseil des ministres de l'Éducation. Rapport de l'enseignement en français et en anglais en milieu minoritaire, 1989.
** Voir le tableau II-5.

Tableau II-52

Écoles publiques homogènes, Territoires du Nord-Ouest, 1986

Écoles homogènes*	Effectifs*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
0	0	119	0	459	0

Sources :

* Ministère de l'Éducation des Territoires du Nord-Ouest.
** Voir le tableau II-5.

Tableau II-50

Population totale de langue maternelle française, Territoires du Nord-Ouest et Yukon, 1976, 1981, 1986

L.M.F./ population totale (en %)		L.M.F.	
Population totale		L.M.F.	
1976	64 445	1 620	2,5
1981	68 900	1 820	2,6
1986	75 745	2 040*	2,7
1986	75 745	2 240**	3,0

* Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
** Langue maternelle unique (française) et double (française et anglaise).

SOURCE : Statistique Canada.

La population de langue maternelle française se retrouve principalement dans les centres de Yellowknife, Iqaluit, Nanisivit, Whitehorse et Inuvik. Elle représente 2,7 p. 100¹⁰⁸ de la population totale de ces territoires. Cette proportion a augmenté de 0,2 point entre 1976 et 1986. Toutefois, en compilant les choix de double langue maternelle (française et anglaise) avec ceux de langue maternelle unique (française) du recensement de 1986, nous constatons que la population de la minorité de langue officielle représente 3 p. 100 de la population totale des territoires. Ces quelque 2 240 personnes¹⁰⁹ sont plus représentatives de la clientèle admissible en vertu de l'article 23 de la *Charte canadienne des droits et libertés* puisque cet article n'exige pas que la langue maternelle soit la seule langue maternelle.

Puisque ces deux territoires forment des entités administratives distinctes, nous en donnons brièvement les particularités démographiques. En 1986, le Yukon regroupe 620 personnes de langue maternelle française (données ajustées); elles constituent une proportion de 2,6 p. 100 de la population territoriale qui se chiffre à 23 500 personnes. Pour leur part, les Territoires du Nord-Ouest sont plus peuplés : une population territoriale de 52 245 personnes, dont 1 420, soit 2,7 p. 100, sont de langue maternelle française (données ajustées).

La situation scolaire de la minorité de langue officielle dans les Territoires du Nord-Ouest est également quelque peu différente de celle du Yukon. Nous les examinerons donc l'une après l'autre.

Selon l'Ordonnance scolaire de 1977, amendée en 1983, le choix de la langue d'instruction de la maternelle à la 2^e année, dans les Territoires du Nord-Ouest, est laissé aux autorités locales pour la population de l'école ou d'une partie de l'école qu'elles gèrent. Par ailleurs, c'est le ministre de l'Éducation qui prescrit la langue d'instruction pour les années suivantes. Si celle-ci est autre que la langue anglaise, l'étude de cette dernière est obligatoire comme l'anglais qui est prescrit tout en n'étant pas la langue de la majorité de l'école, c'est la langue de la majorité qui devient la langue seconde. Les anglophones ont droit à l'instruction en anglais et les autorités locales ou territoriales doivent satisfaire cette population.

également fait état des progrès réalisés entre 1986-1987 et 1988-1989, les effectifs dans les programmes de la minorité ont augmenté de 238 p. 100 (162 élèves). De plus, une école homogène a vu le jour.

Quant à la gestion scolaire, elle n'est pas encore amorcée à Terre-Neuve. Les parents francophones doivent se prévaloir des comités consultatifs pour présenter des recommandations ou des requêtes aux commissions scolaires de la majorité qui, pour leur part, n'en tiennent pas toujours compte.

XII. TERRITOIRES DU NORD-OUEST ET YUKON

A. HISTORIQUE

1659 : Les explorateurs Radisson et Des Groseilliers se mettent en relations avec les Autochtones du Grand Nord.

1867 : Les Sœurs grises font construire un pensionnat à Fort Providence. Jusqu'en 1945, les écoles sont dirigées par des missions religieuses.

1965 : Le système d'éducation est placé sous la responsabilité des conseils des Territoires du Nord-Ouest et du Yukon et géré par les ministres respectifs de l'Éducation.

1983 : Les amendements à la loi scolaire des Territoires du Nord-Ouest permettent des mécanismes de gestion qui favorisent la participation locale.

1984 : La Directive n° 7230 stipule que le Yukon fournira, là où le nombre le justifie, l'instruction en français pour les élèves y ayant droit en vertu de l'article 23 de la *Charte canadienne des droits et libertés*.

1984 : La *Loi sur les langues officielles* des Territoires du Nord-Ouest, le *Bill 9-84 (2)*, reconnaît l'anglais et le français comme langues officielles et leur donne un statut égal. L'application en est cependant retardée jusqu'en 1990.

1990 : La *Loi sur les langues officielles* des Territoires du Nord-Ouest, le *Bill 9-84 (2)*, entre en vigueur.

B. LE CONTEXTE ACTUEL

1. Statistiques

Les Territoires du Nord-Ouest et le Yukon recouvrent une énorme étendue de quelque 3 862 199 km², c'est-à-dire 38,8 p. 100 de la superficie totale du Canada. La position géographique de ces deux territoires dans le Grand Nord canadien en font cependant une région dont la population est clairsemée; quelque 75 745 personnes y habitent en 1986. Leur population augmente à un rythme semblable à celui des provinces de l'Ouest canadien : 17,5 p. 100 depuis 1976 et 9,9 p. 100 depuis 1981 (tableau II-50).

de cette loi est en cours et propose de reconnaître le droit à l'instruction dans la langue de la minorité, dans des établissements homogènes là où le nombre le justifie. Ce remaniement fait suite à un énoncé de principe émis en 1982 et à une prise de position en 1984. En effet, dans *Aims of Education*, le ministère de la province dit désirer (objectif n° 15) :

to ensure that both English language and French language pupils are provided with the opportunity to study in their own language where number warrants and also to study English or French as a second language. (1984)

The Report of the Policy Advisory Committee on French Programs présenté en décembre 1986 vient réaffirmer cette position tout en précisant que les établissements de la minorité devraient être formés au sein des commissions scolaires actuelles.

La situation des francophones de Terre-Neuve est sans doute difficile mais leurs efforts continuent. À ce titre, un épisode de leur vie illustre leur courage ainsi que les défis et les obstacles qu'ils rencontrent.

En septembre 1987, la Commission scolaire du Labrador nomme un anglophone à titre de directeur adjoint responsable de la section française de l'Académie Notre-Dame-du-Labrador. La commission scolaire a soutenu que, pour l'engagement du personnel, il fallait procéder selon les règles établies par la convention collective : préférence accordée aux postulants déjà à l'emploi de la commission scolaire s'ils possèdent les qualifications correspondant au poste. Or, la commission scolaire n'a pas cru bon d'exiger une connaissance du français pour ce poste. Nous laissons le dernier mot à une porte-parole des parents qui soutient :

qu'on commence lentement à perdre des plumes et que les droits qui ont été acquis au cours des années, souvent difficilement, semblent vouloir s'effacer lentement sous la pression constante de la majorité. « Le seul pouvoir du comité en est un de revendication auprès de la commission scolaire. » (Angers, 1987)

C. RÉSUMÉ

Historiquement, la voix de la minorité de langue officielle française est subjugée au chapitre confessionnel. En effet, le système confessionnel d'éducation obtient la primauté. Cependant, depuis l'avènement de la *Charte canadienne des droits et libertés*, la province manifeste un certain intérêt pour les droits de la minorité francophone en émettant un énoncé de principe (1982), un rapport d'enquête (1986) et en assurant la reconnaissance de droits dans l'éventuelle refonte de la *Loi sur l'éducation*.

Au chapitre de l'instruction, nous avons constaté qu'en 1986 l'équivalent de 6,1 p. 100 des enfants d'âge scolaire admissibles en vertu de l'alinéa 23(1)a) sont inscrits dans un programme dispensant l'instruction à la minorité. Les effectifs de ces deux programmes, en 1986, se situent à 68 élèves. Aucune école homogène n'existait alors. Nous avons

Une commission scolaire peut établir des comités d'école. L'article 22 de la *Loi sur l'éducation* désigne les fonctions que ces comités peuvent remplir :

- veiller à l'entretien des bâtiments;
- faire des recommandations pour de nouveaux équipements;
- assurer la liaison entre le conseil scolaire et la communauté;
- accomplir toute autre tâche confiée par le conseil scolaire.

La minorité francophone de Terre-Neuve doit se prévaloir du mécanisme de comités de parents pour faire ses recommandations auprès des commissions scolaires anglophones même si ces comités n'ont aucun statut obligatoire.

C'est d'ailleurs ainsi que se passent les procédures de demande, comme le prouve le cas du comité de parents de Saint-Jean ayant demandé des classes françaises. Un nombre de 19 inscriptions a été jugé insuffisant par la Commission scolaire catholique de Saint-Jean sous prétexte que la révision de la loi scolaire (en cours) exigerait 23 élèves. Au sujet de la gestion, le comité de parents déclare ce qui suit :

Conscients des problèmes et abus qui peuvent surgir lorsqu'une administration anglophone gère un programme d'éducation française, les parents ont demandé un certain droit de gérance en ce qui concerne la bonne marche de ce projet scolaire. (Clair, 1988)

Sans trop préciser les composantes de la gestion, le comité de parents a suggéré de déléguer à la commission scolaire les aspects politiques du dossier pendant que les parents s'occuperaient plutôt des aspects « techniques » du programme de français. Voici ce qu'en dit M. Clair :

La réponse du Conseil fut qu'à Terre-Neuve, seules les Églises ont le droit de gérer les programmes éducatifs. Le rôle des parents est limité et aucune structure n'est prévue pour eux dans les conseils scolaires.

Le Conseil a alors suggéré que les parents nomment un comité consultatif qui communiquerait régulièrement avec le corps administratif du Conseil. Ce comité n'aurait aucun droit de gestion mais serait tenu au courant de tout développement dans le programme de français. (1988)

Le comité de parents de Saint-Jean a accepté cette proposition en se promettant bien de revendiquer ce droit d'après l'article 23 de la *Charte*. Ils ont d'ailleurs déposé leur requête en août 1988 auprès de la cour suprême de Terre-Neuve.

Si la gestion est difficile à obtenir, le droit à l'instruction n'est pas encore enchaîné dans la loi scolaire puisque la *Loi sur l'éducation* de 1970 est silencieuse à ce sujet. Un remaniement

Cet article a eu pour effet d'entériner les droits de cinq groupes religieux dont la population est ainsi répartie lors de l'Union (1949) : l'Eglise anglicane, 33 p. 100, l'Eglise catholique, 31 p. 100, l'Eglise unie, 25 p. 100, l'Armée du Salut, 7 p. 100 et l'Eglise Adventiste du septième jour (pour laquelle nous n'avons pas de pourcentage mais qui a trois écoles). En 1954, une sixième confession religieuse est reconnue : l'Assemblée de la Pentecôte.

Il existe aujourd'hui quatre groupes confessionnels reconnus par la loi scolaire : l'Eglise catholique, le groupe intégré (Eglises unie et anglicane et l'Armée du Salut), l'Assemblée de la Pentecôte et l'Eglise Adventiste du septième jour. Ces groupes comptent un nombre total de 33 commissions scolaires. La province est répartie en quatre cartes scolaires pour 19 districts intégrés, 12 districts catholiques, un seul district pour l'Assemblée de la Pentecôte et un autre pour l'Eglise Adventiste du septième jour.

Le système d'éducation de Terre-Neuve est régi par le *School Act* (1970) tel qu'amendé en 1983 et par le *Ministry of Education Act* (1984). Le ministre de l'Éducation comprend six divisions :

- la division de l'enseignement chargée des questions liées à la mise au point des programmes d'études, des examens, du matériel didactique et des bibliothèques;
- la division de l'administration et du personnel;
- la division des finances;
- la division des services aux écoles;
- la division des services spéciaux;
- la division de la recherche et de l'évaluation.

La commission scolaire demeure l'entité régionale qui conserve les pouvoirs et les droits suivants en matière d'éducation :

- organiser l'enseignement primaire et secondaire;
- fournir les écoles et en assurer l'entretien;
- embaucher et congédier les enseignants;
- veiller au bon état des véhicules si le transport scolaire est organisé ou conclure des ententes à cet égard avec d'autres conseils scolaires;
- imposer les taxes, avec l'approbation du ministre;
- embaucher le personnel compétent affecté aux divers services;
- favoriser l'enrichissement du programme d'étude.

Une commission scolaire est formée de 7 à 15 membres dont les deux tiers, depuis 1984, sont élus et le tiers est nommé par le ministre de l'Éducation. Ils sont en fonction pour une période de quatre ans.

Tableau II-49

Comparaison des effectifs et des écoles publiques, Terre-Neuve, 1986-1987, 1988-1989

Augmentation (en %)	1986-1987		1988-1989	
	1986-1987		1988-1989	
Effectifs dans les écoles offrant l'instruction à la minorité (1 ^{re} à 10 ^e année, 1986-1987, 1 ^{re} à 12 ^e année, 1988-1989)	68	230	5	150
Nombre d'écoles	2			
Effectifs dans des écoles homogènes	0	47		
Nombre d'écoles	0	1		

Source : Ministère de l'Éducation de Terre-Neuve.

Enfin, pour l'année scolaire 1989-1990, Statistique Canada estime à 220 élèves les effectifs de la 1^{re} à la 12^e année dans les écoles offrant des programmes d'enseignement à la minorité francophone, soit une baisse de 4,3 p. 100 par rapport aux effectifs de 1988 et une augmentation de 223,5 p. 100 par rapport à ceux de 1986.

2. Description du système scolaire

Le système scolaire de Terre-Neuve et du Labrador présente plusieurs particularités en regard des autres provinces canadiennes. Tout d'abord, il est entièrement confessionnel et décentralisé.

Lors de l'entrée de la province dans la Confédération canadienne en 1949, l'article 93 de la *Loi constitutionnelle de 1867* a fait l'objet de précisions. Le contrôle de l'éducation est remis, comme dans les autres provinces canadiennes, aux mains de la province. Cependant, l'article 17 de la *Loi sur Terre-Neuve* édicte :

[...] la législation aura le pouvoir exclusif d'édicter des lois sur l'enseignement, mais la législation n'aura pas le pouvoir d'adopter des lois portant atteinte aux droits ou privilèges que la loi, à la date de l'Union, conférait [a] Terre-Neuve à une ou plusieurs catégories de personnes relativement aux écoles confessionnelles, aux écoles communes (fusionnées) ou aux collèges confessionnels, et à même les deniers publics de la province de Terre-Neuve affectés à l'enseignement :

a) toutes semblables écoles recevront leur part desdits deniers conformément aux barèmes établis à l'occasion par la législation, [sans] différenciation injuste, pour les écoles fonctionnant alors sous l'autorité de la législation.

Tableau II-47

Écoles publiques dispensant l'Instruction à la minorité, Terre-Neuve, 1986

Écoles*	Effectifs (1 ^{re} à 10 ^e année)*	Population minoritaire (de 6 à 17 ans)**	E.M.F.** (en %)	Clients admissibles**	Effectifs C.A.** (en %)
2	68	267	25,5	1 117	6,1

Sources :

* Ministère de l'Éducation de Terre-Neuve. *Enrolment 1986-87 et Conseil des ministres de l'Éducation. Rapport de l'enseignement en français et en anglais en milieu minoritaire*, 1989.
 ** Voir le tableau II-5.

Tableau II-48

Écoles publiques homogènes, Terre-Neuve, 1986

Écoles homogènes*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	E.M.F.** (en %)	Clients admissibles**	Effectifs C.A.** (en %)
0	0	267	0	1 117	0

Sources :

* Ministère de l'Éducation de Terre-Neuve. *Enrolment 1986-87*.
 ** Voir le tableau II-5.

Les progrès réalisés grâce à l'obtention d'une école homogène française à Grand'Terre permettent de croire que la situation difficile de la minorité francophone s'améliore lentement. En effet, en 1989, la communauté de Grand'Terre inaugure le Centre scolaire et communautaire Sainte-Anne pour les élèves de la maternelle à la 4^e année avec des inscriptions de 60 élèves, dont 47 de la 1^{re} à la 4^e année. L'école, administrée par la commission scolaire catholique anglophone de Port-au-Port, a fait l'objet de nombreuses requêtes et a bénéficié de subventions à la construction versées par le ministère de l'Éducation de la province (25 p. 100) et par le gouvernement fédéral (75 p. 100). Par ailleurs, l'école d'immersion de Cap Saint-George est en voie de transformation de sorte qu'elle comporte, en 1989, une section française et une section d'immersion.

Une comparaison des effectifs de la 1^{re} à la 12^e année entre 1986-1987 et 1988-1989 permet d'évaluer les progrès réalisés (tableau II-49). En 1989, les effectifs dans les programmes d'enseignement de la minorité ont déjà atteint 230 élèves dans cinq écoles. Ces chiffres démontrent une augmentation de 238 p. 100, mais ces effectifs demeurent en deçà du nombre que représenteraient tous les enfants dont la langue maternelle est le français (choix double et unique) et tous ceux qui sont admissibles en vertu l'alinéa 23(1)a), soit 1 117 enfants.

Tableau II-46

Population totale de langue maternelle française, Terre-Neuve, 1976, 1981, 1986

L.M.F./ population totale (en %)		L.M.F.	1976	1981	1986
			557 725	567 680	568 345
			2 755	2 655	2 670*
			0,5	0,5	0,5
					3 115**
					0,5

* Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
** Langue maternelle unique (française) et double (française et anglaise).
Source : Statistique Canada.

Au chapitre de l'instruction en français, les progrès accomplis sont relativement récents. En effet, dans les années 1950 et 1960, une certaine connaissance de la langue anglaise est exigée dès l'âge de cinq ans, avant l'entrée à l'école : « Tout enfant qui arrive à l'école ne sachant pas l'anglais est renvoyé à la maison » (Waddell et Doran, 1983, p. 191). Depuis 1975, l'immersion française gagne en popularité à Terre-Neuve. Mais le ministère de l'Éducation ne s'est officiellement penché sur la question de l'instruction à la minorité de langue officielle que depuis 1982.

En 1986, selon le ministère de l'Éducation de Terre-Neuve, 68 élèves de la 1^{re} à la 10^e année reçoivent leur éducation dans des programmes pour la minorité dans deux écoles du réseau des commissions scolaires de la province¹⁰⁴. Or, ces effectifs représentent l'équivalent de 25,5 p. 100 des enfants d'âge scolaire dont le français est la langue maternelle¹⁰⁵ de 6 à 17 ans, soit un nombre de 267. Ces effectifs constituent l'équivalent de 6,1 p. 100 de la clientèle scolaire admissible en vertu de l'alinéa 23(1a). Une compilation spéciale de Statistique Canada a établi cette clientèle à 1 117 enfants¹⁰⁶ (tableau II-47).

Les écoles homogènes¹⁰⁷, comme nous les avons définies ailleurs, c'est-à-dire des établissements autonomes, n'existent ni à Terre-Neuve ni au Labrador en 1986. L'instruction en français est offerte dans deux « sections » (au sens de « classes » et non de sections ontariennes) des écoles de la majorité : l'Académie Notre-Dame-du-Labrador (primaire) et le Labrador City Collegiate (secondaire). Les effectifs des écoles homogènes en 1986, présentés au tableau II-48, représentent 0 p. 100 de la population de langue maternelle française et de la clientèle admissible en vertu de l'alinéa 23(1a).

- 1982 : Un comité consultatif ministériel sur le bilinguisme propose d'inclure dans les objectifs d'enseignement de la province des dispositions sanctionnant l'enseignement du français langue maternelle. Le ministre de l'Éducation émet un énoncé de principe reconnaissant le droit des francophones à l'instruction dans leur langue maternelle.
- 1986 : *Le Report of the Policy Advisory Committee on French Programs* reconnaît le droit de la minorité francophone à l'instruction dans sa langue, dans des établissements homogènes gérés par les commissions scolaires de la province.
- 1987 : Un poste de conseiller pédagogique pour les programmes de français langue maternelle est créé au sein du ministère de l'Éducation.
- 1988 : Une poursuite est engagée contre la Commission scolaire catholique de Saint-Jean et le Procureur général de Terre-Neuve pour la reconnaissance des droits à l'instruction selon l'article 23 de la *Charte*.
- 1989 : Ouverture de la première école homogène française de Terre-Neuve à Grand'Terre.

B. LE CONTEXTE ACTUEL

1. Statistiques

C'est pendant la première moitié du XIX^e siècle que les premiers francophones se sont installés à Terre-Neuve. Venant principalement de la Bretagne, de Saint-Pierre et Miquelon ou encore de l'Acadie (Chéticamp, Margaree), ils se sont surtout établis sur la côte ouest de l'île. Après la rupture des liens formels avec la France lors de l'abolition des droits saisonniers de pêche en 1904, la population francophone de Terre-Neuve s'est trouvée doublement isolée : d'abord par la géographie du territoire, puis par l'allégerance de ce territoire à l'Angleterre.

La population francophone de Terre-Neuve est, encore aujourd'hui, concentrée dans la péninsule de Port-au-Port, soit à Grand'Terre, à Cap Saint-George, à l'Anse-aux-Canards, à Stephenville et, dans la péninsule d'Avalon, à Saint-Jean et à Labrador City. D'après les données du recensement de 1986, elle compte 0,5 p. 100 de la population totale de la province. Le nombre de personnes de langue maternelle française a diminué de 85 depuis 1976; il s'élève à 2 670 personnes¹⁰² en 1986, comme l'indique le tableau II-46. Cependant, si nous complions les choix de double langue maternelle (français et anglais) avec ceux de langue maternelle unique (française), nous notons que la population de langue maternelle se chiffre à 3 115 personnes¹⁰³. Ces chiffres reflètent mieux la communauté visée par l'article 23 de la *Charte canadienne des droits et libertés* puisque cet article n'exige pas que la langue maternelle déclarée soit l'unique langue maternelle.

française et anglaise). Les effectifs des 12 écoles homogènes, soit 1 959 élèves, représentaient l'équivalent de 18,6 p. 100 de cette clientèle. Il n'existe aucune école secondaire homogène publique pour desservir les élèves de la 10^e à la 12^e année.

Quant au droit à la gestion scolaire conféré à la minorité de langue officielle, les mesures visant à en assurer le respect tardent à être mises en œuvre. Pourtant, la *Loi sur l'éducation* (1986) habilite le ministre à recommander au gouverneur en conseil l'établissement d'un district acadien. Dans les faits, la commission scolaire de Clare-Argyle est francophone. Aucun modèle de gestion scolaire pour la minorité de langue officielle n'a encore été élaboré par la Nouvelle-Écosse. Ce sera peut-être, avec l'établissement d'écoles homogènes secondaires, la prochaine étape à franchir.

XI. TERRE-NEUVE A. HISTORIQUE

- 1713 : Le traité d'Utrecht remet le territoire de Terre-Neuve à l'Angleterre. Toutefois, les droits saisonniers de pêche sur la côte ouest de l'île sont conservés à la France.
- 1720 : Les premières écoles sont fondées par l'Eglise d'Angleterre à Terre-Neuve.
- 1836 : L'*Education Act* établit neuf districts scolaires non confessionnels chacun formé d'un conseil de 13 membres. Des fonds publics sont distribués aux groupes religieux chargés de l'éducation.
- 1843 : Faisant suite aux protestations, la nouvelle *Loi sur l'éducation* prévoit deux conseils séparés par districts : un catholique et un protestant.
- 1874 : Une nouvelle *Loi sur l'éducation* prévoit la répartition égale des subventions entre les catholiques et les diverses confessions protestantes.
- 1904 : Abolition des droits saisonniers de pêche sur la côte ouest accordés à la France par le traité d'Utrecht. Ceci signifie la rupture, pour les résidents de l'île, des liens formels avec la France.
- 1927 : La loi scolaire établit le droit aux écoles confessionnelles pour toute communauté qui veut bien s'en prévaloir, les catholiques par exemple. Chaque district possède une commission scolaire dont les membres (de la collectivité du district) sont nommés par le gouverneur en conseil.
- 1949 : Terre-Neuve devient province canadienne. Les droits confessionnels acquis sont entérinés et toutes les écoles sont subventionnées à même les fonds publics.
- 1969 : Les 290 districts scolaires sont consolidés pour en former 38.
- 1970 : La *Loi sur l'éducation* prévoit l'élection du tiers des membres des commissions scolaires.
- 1975 : Inauguration de la première école d'immersion (dite « bilingue ») à Cap Saint-Georges.

En raison de l'existence des comités de syndicats, les comités de parents, comme nous les connaissons dans plusieurs autres provinces, n'existent pas formellement en Nouvelle-Ecosse. Seule l'école francophone Shannon de Dartmouth possède un comité de parents remplaçant le comité de syndicats. Cependant, les parents francophones ont formé 21 comités de parents pour veiller à l'enseignement de leurs enfants inscrits à la maternelle, au primaire et au secondaire.

La minorité francophone de la Nouvelle-Ecosse possède donc un réseau d'écoles acadiennes. Les écoles qui ne sont pas encore homogènes pourront le devenir. Entre temps, les jeunes Acadiens sont vite assimilés car un sur trois n'apprend pas le français comme langue maternelle. L'école a donc un rôle primordial à jouer. C'est pourquoi les revendications judiciaires des parents de l'Île-du-Cap-Breton sont importantes. Elles appuient le désir d'épanouissement de la minorité et tentent d'entraver cette assimilation. Les résultats de ces revendications sont encourageants.

Ainsi, la cour suprême de la Nouvelle-Ecosse, en rendant son arrêt (1989) dans l'affaire *Laurent Lavoie et al. v. the Attorney General of Nova Scotia and the Cape Breton District School Board* a su donner à la communauté acadienne des raisons d'espérer. En effet, alors que la cour de première instance avait jugé que les coûts étaient exorbitants et les inscriptions de 50 élèves insuffisantes pour une école, la cour d'appel a décrété le droit à l'instruction mais n'a pas jugé le nombre suffisant pour l'établissement d'une école autonome. Bien qu'il y ait de l'espoir, les pleins droits de l'article 23 ne sont cependant pas concrétisés. Les Acadiens ont pourtant des arguments à invoquer en leur faveur : les objectifs de l'article 23, le nombre suffisant conjugué aux critères d'admissibilité en vertu du même article, et enfin le fait que la Nouvelle-Ecosse possède 55 écoles élémentaires et quatre écoles secondaires dont les inscriptions sont inférieures à 49 élèves (Statistique Canada, 1986).

C. RÉSUMÉ

Historiquement, en Nouvelle-Ecosse, les Acadiens ont subi les pressions de la majorité pour que l'anglais soit la principale langue d'instruction des écoles de la province. Des écoles acadiennes ont dû fermer leurs portes là où existait une école publique anglaise (1864). La consolidation des petits districts scolaires en 21 unités en 1982 a encore servi à noyer les Acadiens au sein de la majorité. Aujourd'hui, quoique l'établissement d'écoles acadiennes soit reconnu dans la *Loi sur l'éducation* de la province, ce mécanisme est soumis à l'approbation du ministre de l'Éducation ainsi qu'à la demande d'une commission scolaire de la majorité.

Au chapitre de l'instruction, en 1986, nous avons constaté que les effectifs scolaires dans les programmes dispensant l'enseignement à la minorité (3 655 élèves) constituaient l'équivalent de 34,8 p. 100 de la clientèle admissible en vertu de l'alinéa 23(1a) de la *Charte canadienne des droits et libertés*. Grâce à une compilation spéciale de Statistique Canada, nous avons établi cette clientèle à 10 516 enfants d'âge scolaire (de 6 à 17 ans) dont un parent est de langue maternelle de la minorité (langue maternelle unique et double,

Parmi ses pouvoirs, mentionnons les suivants :

- embaucher et rémunérer les enseignants;
- obtenir l'équipement nécessaire à l'entretien des bâtiments;
- payer le transport et les frais des élèves d'une école à l'autre;
- payer ses frais d'administration.

Par un concours de circonstances, la commission scolaire de Clare-Argyle est francophone. La loi ne l'a pas désignée comme commission scolaire francophone même si le paragraphe 3(aaa) le permet :

The Governor in Council [...] may:
upon the recommendation of the Minister, designate an Acadian district and
make determinations respecting the operation of and support for an Acadian
district.

C'est peut-être la clause nécessaire pour ouvrir les portes soit à une commission scolaire provinciale pour la minorité, soit à l'établissement d'une double carte scolaire pour répondre aux besoins de gestion de la minorité francophone.

Il existe en Nouvelle-Écosse un palier local, dont le rôle est plutôt consultatif, composé d'un « *Board of Trustees* » que nous traduisons par « comité de syndics ». Ce comité, formé d'au moins trois membres, est élu pour trois ans par une assemblée annuelle des résidents d'une section de district scolaire. Ce comité rappelle les « *Local Advisory Boards* » de la Saskatchewan qui représentent les intérêts locaux de la population et s'occupent en général d'une section comprenant une école ou deux. C'est au conseil scolaire qu'il revient de décider de la création d'un comité de syndics, qui sera mis sur pied dans quelques districts scolaires seulement. À Halifax, par exemple, les écoles du Halifax County Board of Education sont organisées en 51 sections comprenant toutes, à quelques exceptions près, des comités de syndics.

Le comité de syndics remplit les devoirs que lui dicte la commission scolaire. La *Loi sur l'éducation* fait état des obligations suivantes :

- faire part des opinions et des recommandations des comités de syndics et du public à la commission scolaire;
- visiter les écoles de la section au moins deux fois par année;
- faire des recommandations quant à l'utilisation des bâtiments scolaires
- destinés à d'autres usages que l'enseignement.

Dans les faits, les comités de syndics ont également la responsabilité de juger les cas de suspension d'élèves. Le comité de syndics est donc un mécanisme consultatif qui sert à refléter l'opinion des personnes visées par les décisions des commissions scolaires.

Sur le plan provincial, le ministre de l'Éducation fait office de chef du ministère et de porte-parole du parlement pour toutes les questions relatives à l'éducation. C'est le gouverneur en conseil (le Conseil des ministres) qui est chargé de la surveillance générale des écoles et de l'éducation. Il peut instaurer des règlements, notamment dans les domaines suivants :

- le versement des subventions;
- l'emplacement, la construction et la surveillance des écoles;
- le traitement minimum des enseignants;
- la fermeture des écoles de moins de 16 élèves;
- les programmes d'études;
- l'établissement, l'administration ainsi que la gestion des écoles, des instituts et des services;
- la délégation de son autorité à toute personne désignée.

De plus, le ministre est la personne désignée pour exercer, par exemple, les pouvoirs suivants :

- statuer sur le temps d'instruction en français;
- statuer sur l'utilisation de toutes les sommes affectées à l'éducation;
- diviser la province en inspectoriats et exercer une surveillance générale sur les inspecteurs d'écoles;
- approuver les plans d'écoles et autres bâtiments scolaires;
- prescrire un programme d'études et autoriser le matériel didactique.

Le ministère de l'Éducation remplit en général la fonction d'un organisme qui fournit les programmes d'enseignement et veille à leur mise en œuvre grâce à l'affectation de ressources suffisantes.

Sur le plan régional, le pouvoir décisionnel revient aux commissions de districts scolaires. Le territoire de la province est découpé en 21 commissions scolaires regroupant les villes et (ou) les municipalités. Lors des consolidations effectuées en 1982, les districts antérieurs se sont regroupés et ont établi le nombre de commissions siégeant à leur conseil. Ces nombres sont soumis à l'approbation du ministre et doivent être des multiples de trois. Les commissions scolaires peuvent également diviser leur territoire en sections électorales. La formule de composition d'un conseil de commission scolaire est propre à la Nouvelle-Écosse. En effet, selon *An Act to Consolidate and Amend the Law Respecting the Membership of School Boards*, un tiers des commissaires est élu, un tiers est nommé par le conseil de la municipalité, et le dernier tiers est nommé par le gouverneur en conseil. Les commissaires sont en fonction pour une période de trois ans. Notons enfin qu'en général, la commission scolaire est responsable du contrôle et de la gestion des écoles relevant de sa compétence.

Tableau II-44

Écoles publiques homogènes, Nouvelle-Écosse, 1986

Écoles homogènes*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
12	1 959	3 791	51,7	10 516	18,6

Sources :

* Ministère de l'Éducation de la Nouvelle-Écosse.
** Voir le tableau II-5.

Les progrès enregistrés entre 1986-1987 et 1988-1989 se font surtout sentir dans les écoles homogènes (tableau II-45). Alors que les effectifs de toutes les écoles de la province sont en baisse de 1,9 p. 100 (Commissariat aux langues officielles, *Rapport annuel 1988*), ceux des écoles offrant un enseignement à la minorité sont en baisse de 4,3 p. 100 entre 1986-1987 et 1988-1989 et ce, de la 1^{re} à la 12^e année. Par ailleurs, les effectifs des écoles homogènes sont en hausse de 1,6 p. 100. En 1989, il n'existe aucune école homogène dispensant l'instruction de la 10^e à la 12^e année.

Tableau II-45

Comparaison des effectifs et des écoles publiques, Nouvelle-Écosse, 1986-1987, 1988-1989

1986-1987		1988-1989		Augmentation Décroissance (en %)	
Écoles dispensant l'enseignement à la minorité (1 ^{re} à 12 ^e année)	20	18	(-10,0)		
Effectifs	3 655	3 497	(-4,3)		
Écoles homogènes (1 ^{re} à 9 ^e année)	12	12	0		
Effectifs	1 959	1 990	1,6		

Source : Ministère de l'Éducation de la Nouvelle-Écosse.

Enfin, pour l'année scolaire 1989-1990, Statistique Canada estime à 2 850 élèves les effectifs de la 1^{re} à la 12^e année dans les écoles offrant des programmes d'enseignement à la minorité francophone, soit une baisse de 22,2 p. 100 par rapport à ceux de 1986 et 18,5 p. 100 par rapport aux effectifs de 1988.

2. Description du système scolaire

Le système scolaire de la Nouvelle-Écosse est non confessionnel. Il est réparti sur trois paliers distincts : provincial, régional et local.

Le ministre de l'Éducation prévoit, par règlement, la proportion de la journée scolaire consacrée à la langue de la minorité dans les écoles acadiennes :

- en 1^{re} et 2^e années : 100 p. 100 du temps;
- de la 3^e à la 6^e année : tous les cours en français sauf le cours d'anglais qui est obligatoire;
- au secondaire, premier cycle : un minimum de dix cours en français (sur un total de 18 à 20), dont un minimum de trois cours en français par année;
- au secondaire, deuxième cycle : huit cours en français, dont un minimum de deux par année.

Après bien des hésitations de la part du ministre, le concept de la désignation d'écoles spécifiquement acadiennes est mis en vigueur. En 1986, il existe 19 écoles acadiennes désignées au sein de cinq districts scolaires. Une autre école non désignée offre l'instruction à la minorité acadienne. Ainsi, selon les statistiques du ministère de l'Éducation, 3 655 élèves reçoivent l'instruction en français dans 20 écoles de la 1^{re} à la 12^e année dans le secteur public⁹⁸. Ces effectifs constituent l'équivalent de 96,4 p. 100 des enfants d'âge scolaire (de 6 à 17 ans) de langue maternelle française⁹⁹. Par ailleurs, ces effectifs touchent l'équivalent de 34,8 p. 100 de la clientèle admissible en vertu de l'alinéa 23(1a) (tableau II-43). Nous avons établi cette clientèle à 10 516 enfants¹⁰⁰. Ces données font ressortir le taux d'assimilation des jeunes de la Nouvelle-Écosse et démontrent que, sur trois enfants dont un parent est de langue maternelle française, l'équivalent d'un seul apprend le français au foyer.

Les écoles désignées comme écoles acadiennes ne sont cependant pas toutes homogènes¹⁰¹. En 1986, 12 des écoles le sont et comptent des effectifs de 1 959 élèves, soit l'équivalent de 51,7 p. 100 des enfants d'âge scolaire de langue maternelle française. En outre, ces élèves représentent l'équivalent de 18,6 p. 100 de la clientèle admissible en vertu de l'alinéa 23(1a) comme l'indique le tableau II-44.

Tableau II-43

Écoles publiques dispensant l'instruction à la minorité, Nouvelle-Écosse, 1986

Écoles*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
20	3 655	3 791	96,4	10 516	34,8

Sources :

- * Ministère de l'Éducation de la Nouvelle-Écosse.
- ** Voir le tableau II-5.

Tableau II-42

Population totale de langue maternelle française, Nouvelle-Écosse, 1976, 1981, 1986

Population totale		L.M.F.	L.M.F./ population totale (en %)
1976	828 575	36 870	4,5
1981	847 440	36 030	4,2
1986	873 165	35 810*	4,1
1986	873 175	39 350**	4,5

* Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
** Langue maternelle unique (française) et double (française et anglaise).

Source : Statistique Canada.

En 1981, la loi définit pour la première fois l'école acadienne. En 1983, le ministère de l'Éducation lui confie le rôle suivant :

- a) contribuer au maintien et à l'avancement de la langue française et de la culture des Acadiens dans leur province,

- b) aider les Acadiens à jouir pleinement de leurs droits en matière linguistique.

Les écoles acadiennes sont instaurees selon un mécanisme défini dans la Loi sur l'éducation (1989) déterminant que la requête doit provenir d'une ou de deux commission(s) scolaire(s). Sur recommandation du ministre, le gouverneur en conseil peut accéder à la demande. Le texte de la loi se lit comme suit :

The Governor in Council ... may:

- 3(aa) upon the request of a school board, or the joint request of two or more school boards, and upon the recommendation of the Minister, designate

- (i) as an Acadian school, a school that is within the jurisdiction of the board or one of the boards, and

- (ii) as the area which is to be served by the Acadian school, an area in which there is a sufficient number of children, whose first language learned and still understood is French, to warrant provision of public funds for instruction to be carried out in the French language.

La langue d'administration et de communication d'une école acadienne est le français (5a).

- 1981 : La Loi sur l'éducation de 1981 définit pour la première fois l'école académienne (école où l'enseignement se fait en français); sur recommandation du ministre de l'Éducation, elle octroie au gouverneur en conseil le pouvoir d'accorder ce statut à une école à la demande d'une ou de plusieurs commissions scolaires. Le ministre a également le pouvoir de fixer la durée de l'instruction en français, d'imposer le programme d'études et d'autoriser les manuels.
- 1982 : Faisant suite au rapport de la commission Walker intitulé *Public Finance Education*, les 76 commissions scolaires de la province sont consolidées en 21 unités de districts.
- 1987 : Les parents de Sydney font une requête en cour suprême de la Nouvelle-Écosse pour l'obtention et la gestion d'une école homogène. La location de l'école et les nombres suffisants sont également en litige.
- 1988 : Faisant suite à l'offre d'une école par le Cape Breton District School Board et aux inscriptions d'enfants admissibles selon l'article 23, la cour juge, à l'instar du ministre de l'Éducation, le nombre insuffisant et les coûts exorbitants.
- 1989 : La cour d'appel renverse le jugement de la cour de première instance et estime le nombre suffisant pour l'instruction mais insuffisant pour l'établissement d'une école homogène autonome.

B. LE CONTEXTE ACTUEL

1. Statistiques

L'histoire du peuple acadien est mouvementée et pleine de péripéties. Sa population en Nouvelle-Écosse, en 1881, se chiffrait à 41 219, soit 9,8 p. 100 de la population totale (Arsenault, 1978, p. 350). En 1986, la Nouvelle-Écosse compte une population de langue maternelle française de 35 810 personnes⁹⁵, c'est-à-dire 4,1 p. 100 de la population provinciale (tableau II-42). Ces données nous permettent de constater que ce pourcentage a diminué de 0,4 point depuis 1976 et d'encore 0,1 point depuis 1981.

En tenant compte des doubles choix de langue maternelle (française et anglaise) et des choix uniques (français), nous constatons que la population de la minorité de langue officielle compte 39 350 personnes⁹⁶ en 1986. Ce dernier chiffre reflète mieux la communauté visée par l'article 23 qui ne spécifie pas que la langue maternelle doit être l'unique langue maternelle.

La population francophone est concentrée dans les régions et les villes suivantes : Clare, Argyle, Inverness, Chéticamp, Saint-Joseph du Moine, Margaree, l'Île Madame et Halifax. Elle se retrouve donc dans les milieux ruraux. La transmission de la langue se fait plus facilement sur le plan local mais, puisque les grands centres offrent surtout des services en anglais (90 p. 100 et plus), les francophones perdent leur homogénéité en quittant leur municipalité d'origine. La Nouvelle-Écosse appartient au groupe de provinces dont la minorité de langue officielle est importante⁹⁷ avec l'Île-du-Prince-Édouard (5,1 p. 100), le Manitoba (5,3 p. 100) et l'Ontario (5,8 p. 100).

Quant à la gestion scolaire pour et par la minorité de langue officielle, l'existence d'une commission scolaire provinciale (unité n° 5) assure le respect de ce droit.

X. NOUVELLE-ÉCOSSE

A. HISTORIQUE

- 1701 : Fondation de la première école française à Port-Royal.
- 1713 : En vertu du traité d'Utrecht, la partie continentale de la Nouvelle-Écosse passe sous le contrôle de l'Angleterre.
- 1749 : Un mouvement d'émigration de la Nouvelle-Écosse vers les territoires français voisins est amorcé; les Acadiens craignent pour leur sécurité devant les pouvoirs de l'Angleterre.
- 1755 : La déportation des Acadiens depeuple la Nouvelle-Écosse de sa collectivité francophone.
- 1764 : Les Acadiens déportés sont autorisés à revenir au pays après avoir prêté un serment d'allégeance à la Couronne d'Angleterre.
- 1766 : La première *Loi sur l'éducation* interdit l'établissement d'écoles « papistes », c'est-à-dire catholiques.
- 1786 : L'interdiction de 1766 est levée et les catholiques peuvent fonder leurs écoles, mais les enseignants doivent prêter serment au roi d'Angleterre et nier l'autorité du Pape.
- 1811 : Le *Grammar School Act* prévoit la nomination de commissaires d'école.
- 1832 : L'État assume le financement des écoles, y compris les écoles acadiennes de Halifax. Chaque district scolaire doit posséder son conseil scolaire.
- 1841 : La loi reconnaît le financement à même les fonds publics pour les écoles où est enseigné le français, le gaelique ou l'allemand.
- 1864 : Le *Public School Act* instaure un système d'écoles publiques financées par des subventions du gouvernement et par des impôts locaux. Les écoles acadiennes doivent fermer leurs portes là où se trouve une école publique.
- 1867 : La Nouvelle-Écosse devient province canadienne.
- 1902 : La commission d'enquête « Acadian Commission » recommande l'instruction en français pour les enfants des Acadiens pendant les quatre premières années du primaire et l'instruction en anglais pour les années suivantes. Ces recommandations sont graduellement mises en vigueur et abandonnées par la suite.
- 1908 : Faisant suite à une pétition des Acadiens, un règlement permet l'usage du français de la 1^{re} à la 4^e année, mais il insiste sur l'apprentissage de l'anglais et sur le pouvoir des commissaires d'embaucher des enseignants de langue anglaise.
- 1950 : Un ministre de l'Éducation est nommé.

La langue d'administration et de travail, le français, y est précisée. Le siège administratif est situé à Abram-Village dans le comté de Prince. La commission scolaire francophone est également responsable de la promotion et de la diffusion de l'information concernant l'instruction en français dans toute la province.

L'avenir éducatif des Acadiens de l'Île-du-Prince-Édouard est encourageant. De plus, certaines caractéristiques leur confèrent une grande force de survie. Voici comment les décrits un observateur :

Les Acadiens n'ont pas l'habitude de se plaindre. Bien qu'accoutumés à la prépondérance de l'anglais dans la plupart des sphères d'activité qui ne relèvent pas directement d'eux, rien ne leur plairait davantage que de voir s'améliorer ou s'accroître les services en français de quelque gouvernement que ce soit. (Sloane, 1987, p. 18)

Certains mécanismes d'autodéfense propres aux Acadiens, comme les coopératives (d'achat, de production et de services), ont consolidé chez eux l'esprit de solidarité et assuré la cohésion communautaire dans le cadre d'institutions de langue française. Toutefois, en raison de l'urbanisation, des médias et des valeurs personnelles auxquelles tiennent les Acadiens, l'école homogène sera appelée à jouer un rôle prépondérant dans l'épanouissement de la communauté acadienne.

C. RÉSUMÉ

Historiquement, la minorité de langue officielle de l'Île-du-Prince-Édouard a subi de nombreux revers qui ont noyé les Acadiens au sein de la majorité anglophone : interdiction d'enseigner dans la langue de la minorité, consolidation des écoles et des districts scolaires avec ceux de la majorité. Depuis 1960, l'instruction primaire et secondaire est dispensée dans la région Evangéline; elle regroupe un grand nombre d'Acadiens. Depuis 1971, la commission scolaire de cette région, celle de l'unité n° 5, gère l'éducation de l'école Evangéline. Enfin, les francophones de l'Île ont obtenu la gestion complète de leur système scolaire par l'établissement de la commission francophone provinciale; en effet, en 1990, la commission scolaire de l'unité n° 5 est étendue à toute la province.

Au chapitre de l'instruction, nous avons constaté, d'après une compilation spéciale de Statistique Canada, que la clientèle admissible en vertu de l'alinéa 23(1)a) de la *Charte canadienne des droits et libertés* (langue maternelle d'un parent) se chiffre, en 1986, à 2 280 enfants d'âge scolaire. Les effectifs dans les écoles dispensant des programmes dans la langue de la minorité constituent l'équivalent de 21,8 p. 100 de cette clientèle admissible. Ainsi, l'équivalent de quatre enfants sur cinq n'étudie pas dans la langue de la minorité. Étant donné l'offre restreinte de services (deux écoles pour desservir toute la province, aussi petite soit-elle), nous devons conclure que ce facteur est peut-être, en partie, la cause de l'écart que nous observons entre les effectifs scolaires réels et la clientèle éventuelle. Une recherche plus approfondie fournirait un aperçu complet des causes de cet écart.

- l'approbation des budgets présentés par les commissions scolaires;
 - l'établissement des catégories et des classes de brevets aux enseignants.
- Sur le plan régional, chacune des cinq unités est gérée par une commission scolaire composée de 15 membres ayant un mandat de trois ans. Dans le cas de la commission scolaire francophone, dix membres proviennent de la région administrative antérieurement connue sous le nom d'unité n° 5 et cinq autres membres sont élus dans les autres régions de la province. Pour être éligible au conseil de la commission scolaire francophone, il faut être admissible en vertu de l'article 23.

Les fonctions des commissions scolaires sont les suivantes :

- veiller à la bonne garde de tous les biens scolaires;
- offrir la gratuité scolaire à toutes les personnes âgées de 6 à 20 ans;
- consulter les enseignants au sujet de l'affectation des élèves à des classes;
- embaucher des enseignants par contrat écrit et, s'il y a lieu, suspendre ou congédier un enseignant, conformément aux règlements;
- déterminer les conditions d'admission et de fréquentation de leurs écoles.

Enfin, la loi scolaire garantit quatre privilèges à tous les élèves de la province : l'enseignement, le transport, les livres et tous les services nécessaires.

La question de la gestion scolaire par la minorité francophone fait l'objet d'un paragraphe dans l'amendement de 1988 à la *Loi sur l'éducation*. Au paragraphe (4) de l'article 50, la minorité se voit conférer le droit de participer à l'élaboration et à l'implantation de programmes, comme l'avait énoncé la cour d'appel :

50. (4) *Citizens of Canada who*

(a) are residents of the province; and

(b) have the right under section 23 of the Charter to have their children receive primary and secondary school instruction in French in the province

have the right to participate in French language instruction program development and delivery.

En réalité, le droit de participation édicté dans la *Loi sur l'éducation* est précisé dans la « Division C » des amendements aux règlements. Il s'agit d'une commission scolaire francophone dont les responsabilités sont les suivantes :

6.05 (1) *The French School Board shall have jurisdiction over and administer French language instruction in the province in accordance with the Act and the regulations.*

2,6 p. 100 par rapport aux effectifs de 1988. D'autres progrès se font sentir. En septembre 1990, deux classes de français de 15 élèves offriront l'instruction en français à Summerside. Par ailleurs, les écoles d'immersion regroupent de nombreux enfants d'Acadiens. En 1986-1987, la province est au deuxième rang des provinces canadiennes pour le fort pourcentage de ses effectifs scolaires en immersion : 11 p. 100, soit 2 692 élèves.

2. Description du système scolaire

Le système scolaire de l'Île-du-Prince-Édouard est non confessionnel et public. La province est divisée en cinq unités scolaires, dont quatre anglophones et une francophone qui s'étend à tout le territoire de la province.

Le ministère de l'Éducation est divisé en deux sections : 1) les programmes et les services, 2) l'administration et les finances. Dans la section des programmes, un conseiller pédagogique veille à l'élaboration des programmes pour francophones à tous les niveaux. Il n'a cependant pas de pouvoir de décision.

Selon l'amendement de 1988 à la Loi sur l'Éducation, le lieutenant-gouverneur en conseil peut établir des règlements sur les sujets suivants :

51. The Lieutenant Governor in Council may make regulations with respect to French language instruction and, in particular,

(a) prescribing the method for determining those who are entitled to receive French language instruction in the province;

(b) establishing procedures for determining the demand for French language instruction in the province;

(c) providing for the admission of students to French language instruction;

(d) providing for the method for determining the location of French language educational facilities;

(e) establishing rules respecting the meaning and application of the term "where numbers warrant";

Quant au ministre de l'Éducation, ses pouvoirs comprennent :

— la prescription de normes d'enseignement;

— l'approbation de manuels scolaires;

— l'adoption du calendrier de l'année scolaire;

— l'achat ou la location de terrains ou leur acceptation à titre de dons;

— la construction et l'aménagement des bâtiments scolaires;

Tableau II-39

Écoles publiques dispensant l'instruction à la minorité, Île-du-Prince-Édouard, 1986

Écoles*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
2	497	706	70,4	2 280	21,8

Sources :

* Ministère de l'Éducation de l'Île-du-Prince-Édouard et Conseil des ministres de l'Éducation. *Rapport de l'enseignement en français et en anglais en milieu minoritaire*, 1989.

** Voir le tableau II-5.

Tableau II-40

Écoles publiques homogènes, Île-du-Prince-Édouard, 1986

Écoles homogènes*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
2	497	706	70,4	2 280	21,8

Sources :

* Ministère de l'Éducation de l'Île-du-Prince-Édouard et Conseil des ministres de l'Éducation. *Rapport de l'enseignement en français et en anglais en milieu minoritaire*, 1989.

** Voir le tableau II-5.

Tableau II-41

Comparaison des effectifs et des écoles publiques, Île-du-Prince-Édouard, 1986-1987, 1988-1989

Augmentation (en %)		1986-1987	1988-1989
Écoles dispensant l'enseignement à la minorité et écoles homogènes	2	2	2
Effectifs	497	507	2

Source : Conseil des ministres de l'Éducation. *Rapport sur l'enseignement à l'Île-du-Prince-Édouard*, 1989.

Pour l'année scolaire 1989-1990, Statistique Canada estime à 520 élèves les effectifs de la 1^{re} à la 12^e année dans les écoles offrant des programmes d'enseignement à la minorité francophone, soit une augmentation de 4,6 p. 100 par rapport à ceux de 1986 et de

De plus, en 1990, les règlements ont été amendés pour préciser les catégories de parents admissibles aux droits conférés par l'article 23. Ces catégories sont inspirées de la Charte :

6.02 Subject to section 6.03, parents who are residents of Prince Edward Island are eligible to have their children receive French language instruction where numbers warrant if they meet one of the following criteria:

- (a) the first language learned and still understood of the parent is French;
- (b) the parent received primary school instruction in French as a first language; or
- (c) one or more children of the parent has received or is receiving French language instruction in Canada at the primary or secondary level.

L'article 6.3 des règlements énonce les modalités d'inscription à l'instruction en français. Cette inscription se fait par voie de déclaration d'admissibilité auprès de la commission scolaire francophone de l'unité n° 5. Le ministre de l'Éducation se garde le droit de réviser et de juger de l'admissibilité d'un parent.

L'offre de services éducatifs à la minorité francophone peut être de trois ordres : la création de classes de français, le transport vers une autre région que celle de la résidence, ou encore la désignation d'une école française. Les deux premiers services sont sous la responsabilité de la commission scolaire francophone de l'unité n° 5; la désignation d'une école française relève du ministre de l'Éducation. Toutefois, la commission scolaire francophone doit obtenir l'approbation du ministre avant de procéder à une offre de services qui demeure conditionnelle à la clause du « nombre suffisant ». Ce nombre est établi à 15 élèves pour deux années consécutives.

La loi et les règlements antérieurs à 1990 ont eu pour effet de permettre l'instruction en français dans l'unité n° 5 du comté de Prince. Sous la compétence de la commission scolaire francophone instituée en 1971 mais étendue à toute la province en 1990, l'école homogène de ce comté, l'école Evangéline, regroupe 465 enfants en 1986-1987, année qui nous intéresse particulièrement. Une autre école, l'école François-Buote de Charlottetown, fondée en 1980, compte 32 élèves inscrits (1986-1987). Ces deux écoles regroupent la totalité des élèves inscrits, de la 1^{re} à la 12^e année, dans la langue de la minorité. Il n'existe aucune école privée francophone. Ainsi, le tableau II-39, qui porte sur les effectifs dans les écoles de la minorité, est semblable au tableau II-40 qui traite des écoles homogènes⁹². Ils indiquent qu'au total, 497 élèves étudient dans des programmes destinés à la minorité. Or, ces effectifs regroupent l'équivalent de 70,4 p. 100 des enfants d'âge scolaire (de 6 à 17 ans) dont le français est la langue maternelle⁹³. En outre, la clientèle admissible en vertu de l'alinéa 23(1)a) se chiffre à 2 280 enfants⁹⁴. Les effectifs dans les programmes à la minorité représentent donc l'équivalent de 21,8 p. 100 des enfants admissibles.

Sur le plan numérique, la population francophone de l'Île appartient au groupe de provinces dont la population de la minorité de langue officielle se situe autour de 5 p. 100, avec l'Ontario (5,8 p. 100), le Manitoba (5,3 p. 100) et la Nouvelle-Écosse (4,5 p. 100). Son poids politique peut donc s'apparenter à celui des francophones de ces provinces.

La situation scolaire des francophones de l'Île-du-Prince-Édouard profite d'un recours aux tribunaux dont nous voyons aujourd'hui l'aboutissement. En 1982, les parents de 17 élèves déposent une requête auprès de l'unité scolaire anglophone n° 2 afin d'obtenir une classe de 1^{re} année à Summerside. La requête est rejetée. Renouvelée en 1983 puis en 1985, elle sera chaque fois rejetée. La commission scolaire décide que le nombre est insuffisant mais propose l'inscription à un programme d'immersion. Le ministre de l'Éducation refuse d'intervenir. Le litige a été porté devant les tribunaux par un *Renvoi* en cour d'appel. L'arrêt rendu en 1988 précise que la *Loi sur l'éducation* est inconstitutionnelle pour les raisons suivantes :

- la loi confère l'instruction aux enfants dont la langue maternelle est le français alors que la *Charte* confère les droits aux parents dont la langue maternelle apprise et encore comprise est celle de la minorité;
- la loi scolaire restreint le droit à l'instruction aux limites géographiques des commissions scolaires alors que la *Charte* spécifie « partout dans la province »;
- la loi scolaire confère le droit à l'instruction, mais non également à des écoles comme le fait l'article 23;
- la loi ne devrait pas permettre aux commissions scolaires de décider de l'offre de programmes à la minorité;
- la loi est silencieuse sur la participation de la minorité à l'élaboration et à l'implantation de ses programmes.

Par suite du *Renvoi* en cour d'appel, la *Loi sur l'éducation* a été amendée ainsi :

- 47(2) Where numbers warrant, French language instruction shall be provided in accordance with the regulations to children of citizens of Canada who have the right under section 23 of the Charter to have their children receive primary and secondary school instruction in French in the province.
- (3) Where numbers warrant, French language instruction provided pursuant to subsection (2) shall be provided in French language educational facilities in accordance with the regulations.

B. LE CONTEXTE ACTUEL

1. Statistiques

Sur le plan historique, on estime qu'une trentaine de familles acadiennes comprenant quelque 200 personnes, sont demeurées sur l'Île après la déportation des Acadiens en 1758. Elles vivent alors dans la partie nord de l'Île et font la pêche pour le compte de sujets britanniques (Arsenault, 1978). En 1805, l'Île-du-Prince-Édouard compte environ 7 000 personnes de descendance française, écossaise ou loyaliste. Au cours des vingt-cinq années qui suivent, un nombre considérable d'immigrants du Royaume-Uni vient s'établir dans l'Île. En 1833, les francophones sont ainsi noyés dans la population alors estimée à 30 000 personnes. En 1881, le recensement dénombre 10 751 Acadiens, soit 9,9 p. 100 de la population totale de l'Île.

Tableau II-38

Population totale de langue maternelle française, Île-du-Prince-Édouard, 1976, 1981, 1986

Population totale	L.M.F.	L.M.F./ population totale (en %)
1976	118 230	6 545
1981	122 505	6 080
1986	125 650	5 920*
1986	126 645	6 500**

* Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
** Langue maternelle unique (française) et double (française et anglaise).

Source : Statistique Canada.

En 1986, la population de l'Île s'élève à 126 650 personnes⁹⁰. Les personnes de langue maternelle française représentent 4,7 p. 100 de cette population, soit 5 920 personnes. Cette proportion a diminué de 0,3 point (169 personnes) depuis les cinq dernières années et de 0,8 point (625 personnes) en dix ans (tableau II-38). En tenant compte des doubles choix de langue maternelle (française et anglaise) et des choix uniques de français langue maternelle, nous constatons que la population dont la langue maternelle est le français compte 6 500⁹¹ personnes. Ces données reflètent mieux la population visée par l'article 23 qui n'exige pas que la langue maternelle déclarée soit l'unique langue maternelle.

La population francophone se trouve principalement (80 p. 100) dans l'ouest de l'Île et dans le comté de Prince où elle constitue 11,5 p. 100 de la population et ce, surtout à Tignish, à Saint-Louis et à Summerside-Miscouche. Dans la région Evangéline, les francophones sont regroupés à Abram-Village, à Wellington et à Mont-Carmel. Dans le comté de Queen, on les retrouve à Rustico et à Charlottetown.

- 1863 : Un amendement à la loi scolaire abolit la catégorie « enseignant acadien ». La seule exigence pour enseigner est la formation à l'école normale et non plus la connaissance de la langue française. Cette mesure entraîne l'anglicisation des écoles acadiennes.
- 1873 : L'Ile-du-Prince-Édouard devient province canadienne.
- 1877 : Le *Public School Act* établit l'enseignement obligatoire et non confessionnel. Les manuels scolaires sont uniformisés et les manuels en français sont retirés à cause de leur contenu religieux.
- 1881 : Étant donné la protestation des Acadiens, l'utilisation de livres bilingues est autorisée.
- 1885 : Le comté de Prince, qui contient la majorité de la population française de l'Ile, compte 27 écoles publiques acadiennes.
- 1892 : Un inspecteur acadien est nommé pour surveiller l'enseignement dans les écoles acadiennes.
- 1945 : Création du ministère de l'Éducation.
- 1960 : L'école régionale Evangéline est créée à Abram-Village. Il s'agit de la première école acadienne de niveau secondaire et d'une des premières écoles régionales de la province.
- 1965 : Le ministère de l'Éducation entreprend la consolidation des écoles élémentaires.
- 1971 : Les 217 petits districts scolaires sont regroupés en cinq commissions scolaires régionales. Seize écoles acadiennes sont intégrées aux écoles de la majorité anglaise. Dans la commission scolaire de l'unité n° 5 (Evangéline), l'enseignement en français est autorisé.
- 1972 : Lors de la consolidation des petites commissions scolaires, l'unité scolaire Evangéline est laissée intacte. Elle devient l'unité scolaire n° 5 et la langue d'administration et d'enseignement est le français.
- 1980 : La *Loi sur l'éducation* est modifiée, octroyant pour la première fois aux élèves francophones le droit de faire leurs études en français. Les commissions scolaires sont tenues de dispenser l'instruction dans la langue de la minorité lorsqu'au moins 25 élèves sont inscrits dans trois années consécutives entre la 1^{re} et la 9^e année.
- 1987 : L'arrêt d'un *Renvoi* à la cour d'appel de l'Ile précise que la législation provinciale doit établir le « nombre suffisant » à l'instruction et aux établissements et que la minorité a droit de participer à l'élaboration et à l'implantation de ses programmes. La loi scolaire est inconstitutionnelle parce qu'elle limite l'instruction au territoire géographique des commissions scolaires. Les instances francophones doivent revendiquer activement des programmes pour la minorité.
- 1990 : Des amendements à la *Loi sur l'éducation* étendent la compétence de la commission scolaire francophone de l'unité n° 5 à toute la province. L'ouverture de nouvelles classes françaises est également permise avec 15 élèves de deux niveaux consécutifs.

C. RÉSUMÉ

Historiquement, la minorité de langue officielle du Nouveau-Brunswick a obtenu des services éducatifs comparables à ceux de la majorité ainsi qu'un système de gestion complet. Étant donné ces gains, en partie attribuables au poids démographique de cette minorité (33,5 p. 100 en 1986), cette province est aujourd'hui la seule au Canada à offrir à sa minorité francophone un système parallèle à celui de la majorité. Son statut de province bilingue entérine les droits éducatifs.

Au chapitre de l'instruction, les effectifs dans les écoles dispensant des programmes d'enseignement à la minorité se chiffrent à 46 086 élèves de la 1^{re} à la 12^e année pour l'année scolaire 1986-1987. Ces effectifs constituent l'équivalent de 80,4 p. 100 des enfants d'âge scolaire (de 6 à 17 ans) admissibles en vertu de l'alinéa 23(1)a) de la *Charte*. Par ailleurs, les écoles dispensant l'enseignement à la minorité sont presque toutes homogènes (sauf quatre). Les effectifs des écoles homogènes touchent l'équivalent de 76,3 p. 100 des enfants d'âge scolaire admissibles en vertu de l'alinéa 23(1)a). Entre 1986-1987 et 1988-1989, les progrès réalisés sont surtout attribuables au fait que les écoles bilingues sont en voie de devenir homogènes. Ainsi, les effectifs des écoles homogènes ont augmenté de 3,8 p. 100, soit 1 659 élèves.

Quant à la gestion scolaire pour la minorité de langue officielle française du Nouveau-Brunswick, elle relève entièrement de cette minorité. En effet, un système de gestion parallèle pour les deux groupes linguistiques est en vigueur. Si, aujourd'hui, toutes les écoles dispensant l'enseignement à la minorité francophone sont sous l'égide de conseils scolaires francophones, il n'en fut pas toujours ainsi. Le système parallèle a lentement évolué et a franchi les étapes suivantes : comités consultatifs optionnels, comités consultatifs obligatoires, conseils scolaires minoritaires et enfin, conseils scolaires ordinaires.

IX. ÎLE-DU-PRINCE-ÉDOUARD

A. HISTORIQUE

- 1758 : La déportation des Acadiens de l'Île-du-Prince-Édouard prive l'île d'une bonne partie de sa population francophone.
- 1764 : Les Acadiens déportés sont autorisés à revenir au pays après avoir prêté un serment d'allégeance à la Couronne d'Angleterre.
- 1815 : La première école acadienne de l'Île est fondée à Rustico.
- 1825 : La première *Loi sur l'éducation* accorde une aide financière de l'État à toute école réunissant dix étudiants de sexe masculin. Un conseil composé de cinq membres supervise les dépenses des deniers publics.
- 1854 : Un amendement à la loi scolaire rend l'enseignement de l'anglais obligatoire dans les écoles acadiennes.
- 1861 : Les écoles acadiennes doivent maintenir un minimum de 18 élèves pour avoir droit au financement public.

L'évolution des structures de gestion scolaire par les minorités officielles au Nouveau-Brunswick est un exemple de la reconnaissance du principe de la dualité linguistique. En effet, nous pouvons facilement en retracer le cheminement. En 1977, un article de la *Loi sur les langues officielles* avait été promulgué donnant au ministre de l'Éducation le pouvoir de créer des comités consultatifs pour informer les conseils scolaires sur l'enseignement aux groupes minoritaires. Ces comités ont donné lieu, en 1981, aux conseils scolaires minoritaires qui étaient, et sont, une mesure transitoire prise pour remédier à la situation des régions de moindre densité de population où n'est pas permis l'établissement d'un conseil scolaire majoritaire. Cette solution imaginative découlant d'un processus historique a permis à la minorité francophone du Nouveau-Brunswick d'affronter l'avenir avec plus de confiance que les autres minorités d'expression française des provinces anglophones canadiennes. Par ailleurs, le climat de confiance que crée une structure parallèle a favorisé les conditions démographiques que nous avons observées précédemment.

Foucher résume ainsi le contexte favorable du Nouveau-Brunswick en égard au respect de l'article 23 de la *Charte* :

Le Nouveau-Brunswick est la province qui, des trois provinces maritimes, respecte le mieux les impératifs de l'article 23 de la Charte, malgré certaines lacunes [...]. Celles-ci s'avèrent, d'ailleurs, dans le contexte actuel de la province, plus théoriques que pratiques. Ce n'est pas du Nouveau-Brunswick que proviendront, dans un avenir rapproché, les litiges les plus épineux portant sur l'interprétation des droits constitutionnels à l'instruction en français. (1985, p. 67)

Pourtant, les revendications ne sont pas terminées au Nouveau-Brunswick. Si la situation scolaire est nettement acceptable comparativement à celles des autres minorités francophones, des inquiétudes percent tout de même quant à l'avenir (« à long terme », ajoutons-nous) de la communauté acadienne. Un porte-parole précise :

Nous devons vivre avec un taux d'assimilation par l'anglais de 7 p. 100 et, comme si cela ne suffisait pas, le taux de natalité est inférieur à celui des anglophones. Évidemment, l'immigration est toujours en leur faveur. (Winter, 1988)

Notons également que, puisque toute la clientèle admissible, en vertu de l'alinéa 23(1)a), à l'instruction dans la langue de la minorité ne fréquente pas les institutions de la minorité, il y a effectivement des progrès à accomplir. Il reste qu'en principe, l'équivalence d'un enfant sur cinq, soit 20 p. 100 des enfants admissibles d'âge scolaire, n'étudie pas dans la langue de la minorité francophone. Il y a lieu de poursuivre ici la recherche pour en déterminer les causes et établir la part que joue le respect du libre choix des parents et des enfants quant à la langue d'enseignement. Une telle recherche pourrait indiquer si la mise sur pied de classes d'accueil ou de tout autre mécanisme de récupération est souhaitable au Nouveau-Brunswick.

Dans les régions où la population est faible, des conseils scolaires minoritaires ont été établis, conformément à l'article 18.1 (1) de la loi scolaire, sur l'initiative du ministre, ou obligatoirement dans un délai de six mois par ce dernier dans les conditions suivantes :

b) [...] lorsque des parents (i) qui résident dans ce district scolaire, (ii) dont la langue est une langue officielle qui n'est pas la langue officielle [en fonction de] laquelle le district scolaire est organisé, et (iii) qui sont les parents d'au moins 30 enfants en âge scolaire au niveau élémentaire lui présentent une requête conformément aux règlements [...]

L'instauration d'un conseil scolaire minoritaire peut précéder ou suivre l'établissement d'une école. Les conseillers des conseils minoritaires sont nommés par le ministre avec l'approbation du lieutenant-gouverneur en conseil et siègent pour une période de trois ans; leur nombre (de trois à cinq) est déterminé par le ministre. Pour ce qui est du fonctionnement et de l'administration des écoles sous leur contrôle, les conseils scolaires minoritaires ont les mêmes responsabilités et la même autorité qu'un conseil scolaire régulier.

Cependant, à cause du peu d'élèves inscrits, certains de ces conseils scolaires ne peuvent offrir tous les services éducatifs et administratifs du conseil scolaire majoritaire du district. Par conséquent, le conseil minoritaire peut, et parfois doit, procéder à des ententes avec d'autres conseils scolaires quant à l'offre de services, à propos du transport par exemple. De plus, les fonctions d'administration et de supervision du conseil, tels les services d'ordre pédagogique peuvent être remplies par le personnel régional du ministère de l'Éducation.

Alors que quatre conseils scolaires minoritaires avaient été institués, il n'en existe actuellement qu'un seul, d'expression anglaise. Situé à Edmundston, ce conseil gère une seule école, St-Mary's Academy, dont les inscriptions comptent quelque 151 élèves en 1988-1989. Les conseils scolaires francophones minoritaires de Frédericton (district n° 51), de Saint-Jean (district n° 52) et de Newcastle (district n° 53) sont devenus des conseils scolaires ordinaires. Nous avons tout de même décrit la structure de ces conseils scolaires minoritaires parce qu'ils ont marqué une étape importante dans l'évolution de la gestion scolaire minoritaire.

En 1985, un arrêté ministériel a transformé la répartition budgétaire des sommes allouées aux conseils scolaires afin de tenir compte des disparités régionales entre les grands et les petits conseils scolaires. En fait, les conseils scolaires minoritaires devenus conseils scolaires ordinaires sont beaucoup plus petits que les autres conseils scolaires. Aujourd'hui, les allocations budgétaires tiennent compte de trois grands éléments :

1. les programmes et les services offerts par tous les conseils scolaires;

2. la situation du district scolaire, notamment le nombre d'élèves;

3. les normes régissant la rotation du personnel qui requièrent un personnel nombreux malgré le nombre restreint des effectifs.

deux groupes linguistiques, chacun organisant ses écoles dans sa langue sans conflit avec l'autre groupe. (p. 57)

Au Nouveau-Brunswick, des services éducatifs parallèles existent sur les plans local, régional et provincial. Au ministère de l'Éducation, il existe trois divisions dont deux sont établies en fonction du caractère linguistique. Ainsi, une division francophone, sous la responsabilité d'un sous-ministre francophone, est responsable des services aux francophones. Une deuxième, similairement constituée pour la clientèle anglophone, est chargée de l'éducation anglophone. Chacune d'elle offre les services suivants : le développement pédagogique (programmes d'études et services aux élèves), l'évaluation et le perfectionnement (évaluation des enseignants et perfectionnement pédagogique) et les services financiers aux conseils scolaires. La troisième division (administration et finances) s'occupe des services financiers aux conseils scolaires : transport, matériel, manuels, bâtiments, certification des enseignants et administration du personnel.

Le système scolaire du Nouveau-Brunswick est plus centralisé que celui de la majorité des autres provinces canadiennes. Le ministère de l'Éducation délègue peu des pouvoirs qui lui sont traditionnellement dévolus; il conserve le pouvoir décisionnel final. À titre d'exemple, mentionnons que tous les biens appartiennent légalement à la province et que les conseils scolaires doivent lui en fournir un inventaire détaillé. Le ministre peut transférer du matériel d'un district scolaire à un autre. Les budgets sont approuvés par le ministre qui répartit tous les fonds; sauf exception, les conseils scolaires n'ont pas de droit de taxation. La province décide de l'emplacement, de la location ou de la construction des écoles. La rémunération du personnel enseignant et administratif est négociée à l'échelle de la province avec le ministère et le service de la paie y est localisé. Le ministre a aussi les pouvoirs suivants :

- établir le budget de district de chaque conseil scolaire;
- instaurer un système de formation pour les enseignants;
- prescrire ou approuver l'organisation scolaire, les programmes, les services et les cours.

Sur le plan régional, le territoire de la province est découpé en une double carte scolaire : une pour chaque groupe linguistique. Les conseils scolaires anglophones et francophones ont les mêmes pouvoirs et responsabilités. Tel que déterminé par le lieutenant-gouverneur en conseil, le conseil scolaire est composé de 7, 9 ou 11 membres élus qui doivent résider dans la zone où ils se présentent comme candidats. Lorsqu'un siège est vacant, le lieutenant-gouverneur nomme un remplaçant.

Les conseillers sont élus à l'intérieur des districts divisés en zones électorales regroupant un nombre de citoyens à peu près égal. Sur un grand total de 42 districts scolaires, on compte 15 conseils scolaires majoritaires d'expression française comprenant des écoles dont les élèves sont de langue maternelle française et 24 conseils scolaires majoritaires d'expression anglaise dont les élèves sont anglophones.

Des progrès ont été réalisés entre 1986-1987 et 1988-1989. Les effectifs des programmes d'enseignement à la minorité ont diminué de 1,5 p. 100 (690 élèves) pendant cette période, tout comme les effectifs provinciaux majoritaires (de 2 p. 100). Quant aux écoles non homogènes, il n'en reste que deux en 1988-1989 avec des effectifs anglophones minimes : six à l'école La Rivière et 15 à la Cité des Jeunes A.-M.-Sormany. Nous ne comptons donc plus leurs effectifs comme ceux d'écoles bilingues même si nous indiquons, au tableau II-37, qu'il en existe deux. D'ailleurs, à compter de septembre 1990, les élèves anglophones de la Cité des Jeunes A.-M.-Sormany seront transportés dans une école du district anglophone n° 54. Les écoles bilingues sont donc en voie de disparition au Nouveau-Brunswick. Pour leur part, les effectifs des écoles homogènes ont augmenté de 3,8 p. 100 en trois ans : 1 659 élèves (tableau II-37).

Enfin, pour l'année scolaire 1989-1990, Statistique Canada estime à 44 990 élèves les effectifs de la 1^{re} à la 12^e année dans les écoles offrant des programmes d'enseignement à la minorité francophone, soit une baisse de 2,4 p. 100 par rapport à ceux de 1986 et de 0,9 p. 100 par rapport aux effectifs de 1988.

Tableau II-37

Comparaison des effectifs et des écoles publiques, Nouveau-Brunswick, 1986-1987, 1988-1989

Augmentation Décroissance (en %)	1986-1987		1988-1989	
	Effectifs	à la minorité	Effectifs	à la minorité
	46 086	154	45 396	154
	150		152	
Écoles homogènes	43 737		45 396	
Effectifs				

SOURCE : Ministère de l'Éducation du Nouveau-Brunswick. Statistiques : Inscriptions par école 1986-1987 et 1988-1989.

2. Description du système scolaire

Depuis 1981, au Nouveau-Brunswick, le système scolaire est organisé en fonction de la langue de la majorité d'un district. Cette organisation fait suite aux recommandations du *Rapport du comité sur l'organisation et les frontières des districts scolaires du Nouveau-Brunswick* (1979) qui notait la satisfaction exprimée quant au conseil scolaire unilingue de Moncton, établi en 1971, et à celui de Bathurst, établi en 1978 :

Nous nous sommes laissés dire qu'à ces deux endroits les nouvelles structures fonctionnaient bien, que l'harmonie et le respect mutuel existaient entre les

Des statistiques présentées au tableau II-35, nous retranchons les effectifs des écoles bilingues pour nous pencher sur ceux des écoles homogènes⁸⁹. En 1986, selon les données du ministère de l'Éducation, quatre écoles ne sont pas homogènes. Il s'agit de l'école La Rivière du district n° 6 de Shippegan qui abrite six élèves anglophones. Dans le district n° 33, la Cité des Jeunes A.-M.-Sormany d'Edmundston abrite 80 anglophones dans des locaux partagés avec 1 346 francophones. L'école Cormier abrite 48 élèves dans un programme anglais et 15 élèves en immersion avec 611 francophones et enfin, l'école Saint-Paul regroupe 66 élèves anglophones avec 161 francophones. Afin d'être fidèles aux critères utilisés pour les écoles homogènes des autres provinces, nous résumons, au tableau II-36, les données des écoles homogènes seulement. Toutefois, il s'agit d'un faible pourcentage d'anglophones étudiant dans des écoles françaises.

Comme nous l'avons vu, il existe 150 écoles homogènes en 1986. Les effectifs francophones des écoles homogènes se chiffrent à 43 737 enfants, soit l'équivalent de 94,4 p. 100 des enfants d'âge scolaire de langue maternelle française. Enfin, les effectifs dans les écoles homogènes représentent l'équivalent de 76,3 p. 100 des enfants admissibles en vertu de l'alinéa 23(1a) de la Charte.

Tableau II-35

Écoles publiques dispensant l'instruction à la minorité, Nouveau-Brunswick, 1986

Écoles*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
154	46 086	46 350	99,4	57 331	80,4

Sources :

- * Ministère de l'Éducation du Nouveau-Brunswick. *Statistiques : Inscriptions par école, 1986-1987.*
- ** Voir le tableau II-5.

Tableau II-36

Écoles publiques homogènes, Nouveau-Brunswick, 1986

Écoles homogènes*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
150	43 737	46 350	94,4	57 331	76,3

Sources :

- * Ministère de l'Éducation du Nouveau-Brunswick. *Statistiques : Inscriptions par école, 1986-1987.*
- ** Voir le tableau II-5.

XIX^e siècle, des francophones du Québec s'installent graduellement au Nouveau-Brunswick, surtout le long de la Baie des Chaleurs. Lors du recensement de 1881, le Nouveau-Brunswick comptait 58 635 Acadiens, soit 16 p. 100 de la population totale (Arsenault, 1978, p. 359). Aujourd'hui, la population francophone est concentrée dans le nord-ouest, le nord-est et le sud-est de la province.

Par suite de la *Loi sur les langues officielles*, des dispositions relatives à la langue d'enseignement dans les écoles entrent en vigueur en juillet 1977. Ces dispositions prévoient que les élèves dont la langue maternelle est le français feront leurs études en français tandis que les élèves de langue maternelle anglaise feront leurs études en anglais. Par ailleurs, l'alinéa (12) c) institue, en quelque sorte, des écoles bilingues :

c) sous réserve de l'alinéa (12) d), lorsque la langue maternelle d'une partie des élèves est l'anglais et celle de l'autre partie est le français, les classes doivent être organisées de sorte que la langue maternelle de chaque groupe soit la principale langue d'enseignement et que l'autre langue officielle soit la seconde.

Les amendements à la loi scolaire de 1981 instituent un système d'écoles et de gestion homogènes même si les écoles bilingues ont encore des répercussions. D'ailleurs, la loi scolaire prévoit toujours la possibilité, pour un district, d'offrir des classes ou des écoles aux membres de l'autre langue officielle :

3.1 Les districts scolaires, les écoles et les classes sont organisés [selon] l'une ou l'autre des langues officielles du Nouveau-Brunswick.

3.2 Par dérogation à l'article 3.1 et sous réserve de l'article 3.3, un conseil scolaire d'un district scolaire organisé [selon] une langue officielle peut prévoir pour des personnes parlant l'autre langue officielle des classes ou des écoles où la langue d'enseignement est l'autre langue officielle.

En principe, le choix de la langue d'enseignement demeure à la discrétion des parents. Formellement, cependant, une politique du ministère de l'Éducation établit que le critère d'admission à l'instruction en français est la connaissance, par l'enfant, de la langue de la minorité. Des tests oraux sont requis pour permettre l'accès à l'école française.

Ces conditions font en sorte qu'en 1986, pour le secteur public⁸⁶, l'instruction à la minorité francophone est offerte dans 154 écoles homogènes (150) et bilingues (4) qui comptent 46 086 élèves de la 1^{re} à la 12^e année. Ces effectifs englobent l'équivalent de 99,4 p. 100 des jeunes d'âge scolaire (de 6 à 17 ans) dont le français est la langue maternelle⁸⁷ (tableau II-35). Cependant, la clientèle scolaire admissible en vertu de l'alinéa 23(1)(a) a été établie à 331 enfants⁸⁸. C'est donc dire que l'équivalent de 80,4 p. 100 des enfants admissibles reçoit une instruction dans la langue de la minorité. Ainsi, l'équivalent de quatre enfants sur cinq étudierait dans la langue maternelle de leur(s) parent(s).

Tableau II-34

Population totale de langue maternelle française, Nouveau-Brunswick, 1976, 1981, 1986

Population totale		L.M.F.	L.M.F./ population totale (en %)
1976	677 245	223 785	33,0
1981	696 405	234 030	33,6
1986	709 445	237 570*	33,5
1986	709 440	248 630**	35,0

* Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
** Langue maternelle unique (française) et double (française et anglaise).

Source : Statistique Canada.

En comptant les doubles choix de langue maternelle (française et anglaise) avec ceux des choix uniques (français), la population de la minorité de langue française est de 248 630 personnes⁸⁵, soit 35 p. 100 de la population de la province en 1986. Ces derniers chiffres reflètent mieux la communauté visée par l'article 23 puisque cet article n'exige pas que la langue maternelle déclarée soit l'unique langue maternelle.

Les lois adoptées par la province au cours des vingt dernières années, notamment la *Loi sur les langues officielles* promulguée en 1969 et dont les clauses principales sont entrées en vigueur en 1977, ont confirmé l'emploi des deux langues officielles dans tous ses services et dans son système scolaire. D'ailleurs, la *Charte canadienne des droits et libertés* a confirmé ces dispositions en 1982. À l'alinéa 16 (2), le statut des deux langues officielles de cette province est précisé pour ce qui est des institutions de la législation et du gouvernement :

Le français et l'anglais sont les langues officielles du Nouveau-Brunswick; ils ont un statut et des droits et privilèges égaux quant à leur usage dans les institutions de la législation et du gouvernement du Nouveau-Brunswick.

La langue de communication (l'anglais ou le français) pour l'obtention de tout service gouvernemental est également précisée à l'article 20 de la *Charte*. Ces dispositions font donc du Nouveau-Brunswick une province bilingue offrant un contexte favorable à l'épanouissement de la minorité de langue officielle.

Dès l'établissement des premiers arrivants en Acadie, les Français se sont installés sur le territoire du Nouveau-Brunswick. Les grandes vagues d'immigration qui suivent amènent successivement trois groupes principaux : dans les années 1780, les loyalistes de l'Empire viennent s'installer dans la vallée de la rivière Saint-Jean et sur les rives de la Baie de Fundy; vers 1840, des immigrants irlandais s'établissent à Saint-Jean; au milieu du

- 1973 : Le rapport intitulé *l'Éducation de demain* recommande la création de districts unilingues là où les citoyens le désirent.
- 1973 : La *Loi sur les langues officielles* est adoptée à l'unanimité par l'Assemblée législative.
- 1974 : Une division francophone est établie au ministère de l'Éducation créant ainsi deux structures parallèles : une pour les francophones et une pour les anglophones.
- 1977 : Des dispositions de la *Loi sur les langues officielles* entrent en vigueur prévoyant que les élèves dont la langue maternelle est le français feront leurs études en français et ceux dont la langue maternelle est l'anglais feront leurs études en anglais.
- 1977 : Le ministère de l'Éducation a le pouvoir de créer des comités consultatifs pour informer les conseils scolaires sur l'enseignement aux groupes minoritaires.
- 1979 : Le *Rapport du comité sur l'organisation et les frontières des districts scolaires du Nouveau-Brunswick* recommande que les écoles soient organisées en fonction de la langue première et que les districts scolaires soient établis en fonction du caractère linguistique.
- 1981 : La création de conseils scolaires minoritaires est adoptée pour remédier à la situation des régions de moindre densité où n'est pas permis l'établissement d'un conseil scolaire majoritaire. Les recommandations du *Rapport du comité* de 1979 sont mises en pratique et les écoles sont réparties selon la langue première; les conseils scolaires le sont en fonction du caractère linguistique. Les francophones ont acquis la pleine gestion de leurs établissements scolaires homogènes.
- 1983 : Un jugement de la cour du banc de la reine déclare que les écoles bilingues sont des foyers d'assimilation et que l'immersion est destinée aux anglophones et non à la minorité francophone.
- 1985 : Une restructuration transforme les allocations budgétaires du ministère de l'Éducation pour tenir compte des variantes dans les conditions entre les grands et les petits conseils scolaires.
- 1984-1986 : Des arrêtés ministériels transforment les trois conseils scolaires minoritaires francophones en conseils scolaires ordinaires.

B. LE CONTEXTE ACTUEL

1. Statistiques

Lors du recensement de 1986, le Nouveau-Brunswick comptait 237 570 personnes⁸⁴ dont le français est la langue maternelle, soit 33,5 p. 100 de la population totale de cette province (tableau II-34). Cette province compte donc une forte proportion minoritaire de langue maternelle française, proportion qui a d'ailleurs augmenté de 0,5 point entre 1976 et 1986 (13 785 personnes) alors que la population totale de la province augmentait de 4,8 points.

ces écoles, avec celles des commissions scolaires, desservent l'équivalent de 137,8 p. 100 des enfants de langue maternelle anglaise de 6 à 17 ans et l'équivalent de 98,6 p. 100 des enfants qui seraient admissibles en vertu de l'alinéa 23(1)a).

Quant à la gestion scolaire, il s'agit d'une des principales difficultés auxquelles fait face une minorité qui, présentement, se trouve répartie entre deux systèmes confessionnels. Le *projet de loi n° 107* tente d'assurer la conformité des structures scolaires à la réalité linguistique de la province. Cependant, la promulgation de la clause de la loi visant à créer des commissions scolaires linguistiques devra attendre plusieurs années; elle est soumise à un renvoi constitutionnel. C'est pourquoi la minorité anglophone du Québec demande qu'un amendement à la *Loi constitutionnelle de 1867* soit immédiatement envisagé afin de fournir les garanties qui, à son point de vue, sont nécessaires.

VIII. NOUVEAU-BRUNSWICK

A. HISTORIQUE

- 1784 : Le Nouveau-Brunswick se sépare de l'Ile-du-Prince-Édouard et de la Nouvelle-Écosse pour devenir un état autonome.
- 1829 : Un remaniement du *Grammar School Act* interdit tout enseignement religieux.
- 1867 : Le Nouveau-Brunswick devient province canadienne. L'instruction en français est une réalité sans reconnaissance officielle.
- 1871 : Par le *Common Schools Act*, l'enseignement public devient non confessionnel et gratuit. Il est financé par un impôt obligatoire et les subventions du gouvernement. Toutes les matières sont enseignées au moyen de manuels anglais mais la lecture et la grammaire françaises sont enseignées dans les écoles académiques.
- 1875 : Par suite d'une émeute à Caraque et de l'opposition catholique à la loi de 1871, l'enseignement religieux est permis avant ou après la journée scolaire.
- 1944 : Les francophones fondent ensuite un réseau d'établissements scolaires privés. Le gouvernement nomme un assistant francophone pour aider le surintendant en chef des écoles.
- 1964 : Deux sous-ministres sont nommés au ministère de l'Éducation : un francophone et un anglophone. L'Université de Moncton est créée.
- 1966 : Faisant suite aux recommandations de la commission Byrne, les petites unités scolaires sont fusionnées. En conséquence, l'homogénéité des petites unités francophones disparaît et la gestion de fait des écoles académiques par des francophones est noyée dans certaines régions au sein de nouveaux conseils scolaires.

C. RÉSUMÉ

Sans aucun doute, la minorité anglophone du Québec a suivi un cheminement historique différent de celui des minorités francophones du pays. Un réseau d'institutions existe d'un bout à l'autre de la province, du préscolaire à l'université, réseau qui a toujours su répondre aux besoins de la minorité. Toutefois, la minorité de langue anglaise ne jouit pas pour autant de garanties formelles de pouvoirs décisionnels. Par ailleurs, la restructuration du système scolaire, fondée sur le caractère linguistique, afin de donner à la minorité accès à la gestion scolaire est en cours d'élaboration (*projet de loi n° 107*). Cependant, la vaste majorité des anglophones résidant dans les villes de Montréal et de Québec ne peut prévoir comment elle sera touchée par cette restructuration étant donné que les commissions scolaires linguistiques viendront probablement se superposer aux commissions scolaires confessionnelles existantes.

D'autres facteurs influencent aujourd'hui la reconnaissance des droits et des besoins de la minorité d'expression anglaise du Québec : une polarisation des pouvoirs décisionnels entre les paliers local et provincial. Les nouvelles formes scolaires établissent une participation importante du palier local en obligeant la formation de comités d'orientation. Cette innovation confirme la tendance contemporaine vers l'autonomie locale : permettre aux personnes intéressées (les parents) de prendre davantage part aux décisions, autonomie qui pourrait peut-être mieux répondre aux besoins d'une minorité. Cependant, la centralisation du système au ministère de l'Éducation, qui détiennent une grande part des pouvoirs de décision, ajoute aux craintes de la minorité de langue officielle.

Voici la conclusion qui se dégage de l'historique de l'éducation de la minorité anglophone du Québec : même si elle est plus avantagée que les minorités francophones, la population de la minorité anglaise diminue.

Au chapitre de l'instruction dans la langue de la minorité, nous avons constaté que les effets dans les programmes d'instruction de la minorité au sein des commissions scolaires de la maternelle à la 11^e année (111 178 élèves) en 1986 comptent l'équivalent de 127,9 p. 100 des enfants de langue maternelle anglaise d'âge scolaire. En outre, si l'alinéa 23(1a) s'appliquait au Québec, la clientèle admissible aurait été, en 1986, de 121 513 enfants d'âge scolaire. Or, les effectifs dans les programmes de la minorité des commissions scolaires constituent l'équivalent de 91,5 p. 100 de cette clientèle. Nous avons donc conclu que les critères d'admissibilité de l'alinéa 23(1b) (langue d'instruction du parent au primaire) et du paragraphe 23(2) (langue d'instruction d'un frère ou d'une sœur au primaire ou au secondaire) qui sont actuellement en vigueur génèrent une clientèle qui se rapproche, proportionnellement, de celle du critère de la langue maternelle d'un parent (alinéa 23(1a)).

Nous avons également fait état de la situation des écoles privées subventionnées desservant la minorité de langue anglaise. Subventionnées à 80 p. 100 par le ministère de l'Éducation,

reconnait à l'école et à ses agents une meilleure participation dans l'élaboration des décisions de la commission scolaire. (p. 2)

Le projet de loi prévoit la division, par décret du gouvernement, du territoire du Québec en territoires de commissions scolaires francophones et en territoires de commissions scolaires anglophones ayant compétence sur l'éducation préscolaire, l'enseignement primaire ou l'enseignement secondaire. (p. 3)

Adoptée en deuxième lecture en 1988 même si certaines clauses ne sont pas encore promulguées, le *projet de loi n° 107* vise à assurer la conformité de la loi à la réalité sociolinguistique de la province. Elle prévoit notamment la division, par décret du gouvernement, du territoire du Québec en commissions scolaires francophones et en commissions scolaires anglophones ayant compétence sur l'éducation préscolaire, primaire et secondaire. Cependant, cette clause de la loi ne sera promulguée qu'après que le gouvernement du Québec en aura vérifié la constitutionnalité à l'égard de la *Loi constitutionnelle de 1867* par un *Renvoi* en cour supérieure de la province. Pour assurer cette constitutionnalité, les commissions scolaires établies avant 1867 (les commissions scolaires dissidentes catholiques de Greenfield et de Portage-du-Fort, les commissions scolaires dissidentes protestantes de Baie-Combeau, Laurentienne et Rouyen ainsi que celles de l'île de Montréal et de Québec) continuent de jouir du droit à la dissidence religieuse.

Quoique les dispositions de la nouvelle loi soient importantes pour la minorité anglophone du Québec, les retards de sa promulgation sont causes d'inquiétude pour une minorité qui, depuis les quinze dernières années, vit une érosion de son homogénéité et, partant, de la qualité de ses services éducatifs. À ce sujet, Alliance Québec suggère que la loi visant à instaurer des commissions scolaires linguistiques soit mise en vigueur dans les plus brefs délais puisque la « communauté d'expression anglaise ne peut plus se permettre des retards » (1988, p. 11).

En outre, Alliance Québec encourage le gouvernement du Québec à négocier la modification de l'article 93 de la *Loi constitutionnelle de 1867* :

L'urgence de trouver une solution aux problèmes inhérents aux structures d'éducation actuelles est peut-être ressentie de façon plus aiguë par la communauté d'expression anglaise. Néanmoins, la notion de modification constitutionnelle n'est pas dangereuse pour la communauté majoritaire du Québec. Une modification constitutionnelle peut confirmer la validité du présent projet de réforme structurelle et permet donc au gouvernement de procéder rapidement à la création de commissions scolaires anglaises et françaises au Québec. (1988, p. 12-13)

Une révision de la *Loi constitutionnelle* aurait pour effet de fournir des garanties constitutionnelles à la minorité de langue officielle du Québec.

- *ressources matérielles et financières* : l'établissement des budgets pour la distribution des fonds, la gestion et la comptabilité, l'autorisation des prêts et les projets de construction;
- *information* : la collecte et la gestion des données nécessaires au système d'éducation et la diffusion des données guidant les prises de décision.

La commission scolaire joue, en vertu de la loi, un rôle de prestataire de services éducatifs que surveille et dirige le ministre de l'Éducation. Le conseil des commissaires est composé de membres élus par les résidents, d'un représentant élu du comité de parents pour les services au primaire et d'un autre pour les services au secondaire. Les fonctions générales de ce conseil sont les suivantes :

- s'assurer que les personnes relevant de sa compétence reçoivent les services éducatifs auxquels elles ont droit;
- être responsable des services éducatifs aux adultes;
- déterminer tous les trois ans un plan de répartition de ses immeubles;
- consulter les conseils d'orientation et les comités de parents;
- conclure des ententes avec d'autres commissions scolaires ou organismes pour la prestation de services (aux personnes handicapées, à la prématernelle, aux adultes, au secondaire et services professionnels ou autres).

Au chapitre des fonctions reliées aux services éducatifs (c'est-à-dire à l'enseignement), la commission scolaire assure l'application du régime pédagogique établi par le gouvernement. Elle veille à ce que les sections obligatoires des programmes d'études soient enseignées. Ses autres fonctions sont reliées aux ressources humaines, aux ressources matérielles et au transport. En général, la loi stipule quelles sont les fonctions des commissions scolaires, elle ne leur accorde pas de pouvoirs. Les commissions scolaires relèvent de la compétence provinciale.

Les commissions scolaires doivent instituer dans chaque école des comités consultatifs chargés d'assurer une diffusion adéquate de l'information en provenance des commissions scolaires puisqu'un parent y est élu et y siège. Si la commission scolaire gère un programme au primaire et au secondaire, elle comprend deux parents commissaires.

Les nouvelles réformes, principalement le *projet de loi n° 107*, promettent un pouvoir accru sur le plan local grâce à la formation obligatoire de conseils d'orientation. En fait, le but de cette loi, tel que l'énonce le gouvernement dans le préambule, est de créer des commissions scolaires linguistiques et de permettre une participation locale accrue :

Il [le *projet de loi n° 107*] vise principalement à donner à l'école une plus grande autonomie juridique sans briser les liens organiques qui l'unissent à la commission scolaire et au réseau des écoles de la commission scolaire. Il

2. Description du système scolaire

Historiquement, le système scolaire du Québec est organisé en fonction de critères confessionnels. En 1988, tout le territoire est découpé selon deux cartes scolaires de commissions catholiques (181), protestantes (29) et intégrées (multiconfessionnelles) (3). Il s'ensuit que la minorité anglophone a géré ses établissements scolaires par son adhésion au système confessionnel. Cependant, comme nous l'avons constaté, les quinze dernières années ont apporté une modification : le secteur protestant n'est plus un système scolaire homogène de langue anglaise. D'ailleurs, les écoles « protestantes » fonctionnent en réalité comme des écoles neutres ou non confessionnelles. De plus, 38,8 p. 100 des élèves étudient dans des programmes en langue anglaise au sein de commissions scolaires catholiques où ils constituent 4,5 p. 100 de la population totale.

Le système scolaire du Québec est centralisé depuis les modifications qu'il, depuis vingt ans, tente de le soustraire aux instances locales historiquement gérées par les églises. Ainsi, au début de l'année 1988, le ministère de l'Éducation a révisé sa structure administrative afin d'intégrer plus étroitement au centre provincial son palier intermédiaire de réseaux, tout en lui assurant des rapports plus diversifiés avec le milieu scolaire.

Le ministère de l'Éducation emploie 1 237 personnes. Les sous-ministres sont affectés à l'enseignement catholique ou protestant. Les services sont répartis ainsi : 1) la planification et le développement pédagogique, 2) les réseaux, 3) l'administration et 4) les relations de travail. Des structures linguistiques sont graduellement élaborées. Ainsi, ce ministère a créé une direction des services éducatifs aux anglophones, employant une quinzaine de personnes, direction qui a pour mandat :

de veiller à ce que les orientations ministérielles en rapport avec les services éducatifs et leur mise en oeuvre répondent aux besoins du milieu scolaire anglophone. Elle assure la mise en place et le fonctionnement des mécanismes de concertation avec les diverses unités du ministère et avec le milieu scolaire anglophone. Elle participe à l'élaboration, à l'adaptation et à l'implantation des orientations ministérielles en rapport avec les services éducatifs auprès du milieu scolaire anglophone. (*Rapport annuel*, p. 43)

Les pouvoirs du ministre sont vastes. Il exerce les fonctions suivantes :

— *pédagogie* : la définition et l'organisation de l'instruction pour toute la population, l'approbation des programmes et matériel didactique, l'offre de certificats et de diplômes;

— *ressources humaines* : la définition des conditions de travail, l'établissement du système de classification des enseignants, les politiques de formation et de perfectionnement professionnel, la négociation des conventions collectives;

du Québec fait aussi état des baisses alarmantes des effectifs dans son document intitulé *Statistiques de l'éducation* :

Entre 1977 et 1987, dans l'éducation préscolaire et dans l'enseignement primaire, une baisse de l'effectif de 5,2 p. 100 a provoqué la fermeture de 5,5 p. 100 des écoles primaires publiques, tandis que dans l'enseignement secondaire une perte d'un peu plus du tiers des élèves a conduit à la fermeture d'environ 20 p. 100 des écoles secondaires publiques. Durant la même période, on a observé une baisse de 28,3 p. 100 du nombre des écoles anglaises publiques, provoquée par une diminution importante des élèves étudiant en anglais (47,4 p. 100). (1988, p. 8)

Du point de vue de la minorité, les services éducatifs se sont dégradés au cours des quinze dernières années. Alliance Québec fait état de trois difficultés majeures à ce chapitre. Tout d'abord, comme nous l'avons noté plus haut, en raison de la diminution des inscriptions dans les écoles anglaises, nombre de ces écoles sont de petites écoles : « À l'extérieur des principales régions urbaines, les écoles peuvent compter aussi peu que de 20 à 30 élèves, et rarement plus de 100 à 150. Même sur l'Île de Montréal, on retrouve de plus en plus de petites écoles anglaises. » (1988, p. 4). Une perte de services importants s'ensuit : personnel infirmier, travailleurs sociaux, psychologues, conseillers en orientation ou orthophonistes. La deuxième difficulté consiste en la dispersion des effectifs entre plusieurs systèmes. L'augmentation du nombre d'élèves inscrits dans les écoles françaises du système protestant et la dispersion des effectifs entre deux systèmes confessionnels (protestant et catholique) contribuent à l'accroissement de l'hétérogénéité et de la dispersion des effectifs du réseau desservant la minorité de langue anglaise.

Troisièmement, Alliance Québec craint la tendance vers une centralisation progressive de la gestion scolaire au palier provincial, c'est-à-dire au sein du ministère de l'Éducation.

Dans un contexte de normes [minimales] provinciales acceptées, nous devons néanmoins résister à toute tendance vers une sur-centralisation et une standardisation progressives de l'éducation au Québec en matière de pédagogie, d'administration et même de gestion financière. Notre capacité en tant que société de favoriser le potentiel des jeunes d'expression[s] française et anglaise dépend du respect et de l'encouragement que nous accordons à nos identités communautaires distinctes. (1988, p. 7)

La minorité anglophone du Québec est donc inquiète, et les données que nous avons présentées confirment ces inquiétudes quant à la perte d'homogénéité et à la baisse des effectifs.

En observant la situation de l'enseignement dans la langue de la minorité anglaise entre 1986-1987 et 1988-1989, on constate la tendance à la baisse des effectifs de la minorité, alors que les effectifs pour le Québec qui étaient également en baisse antérieurement se sont presque stabilisés (-0,2 p. 100). En effet, les effectifs de la minorité ont diminué de 5,4 p. 100 dans l'ensemble des commissions scolaires et du secteur privé subventionné. Comme le montre le tableau II-33, le nombre d'écoles a aussi diminué, soit de 5 p. 100 (21 écoles). Les effectifs des écoles homogènes des deux secteurs suivent la même tendance, soit une diminution de 4 960 élèves (4,5 p. 100).

Enfin, Statistique Canada estime que cette tendance à la baisse se poursuit dans le secteur des commissions scolaires : en 1989-1990, les effectifs sont de 103 000 élèves, soit une diminution de 2 p. 100 en un an.

Tableau II-33

Comparaison des effectifs et des écoles dans les commissions scolaires et le secteur privé subventionné, Québec, 1986-1987, 1988-1989

	1986-1987	1988-1989	Augmentation Décroissance (en %)
Effectifs dans les programmes d'enseignement [Commissions scolaires (M* à secondaire V)]	111 178	105 141	(-5,4)
Nombre d'écoles (Commissions scolaires)	374	360	(-3,7)
Secteur privé subventionné	8 612	8 144	(-5,4)
Nombre d'écoles	50	43	(-14,0)
Effectifs dans les écoles homogènes [Commissions scolaires (M à secondaire V)]			
Nombre d'écoles	50	43	(-14,0)
Secteur des commissions scolaires	99 190	94 830	(-4,4)
Nombre d'écoles	308	298	(-3,2)
Secteur privé subventionné	6 445	6 145	(-4,7)
Nombre d'écoles	28	25	(-10,7)
Total : Minorité anglophone	119 790	113 285	(-5,4)
Effectifs provinciaux	1 137 252	1 135 584	(-0,2)

* M = maternelle.

Source : Ministère de l'Éducation du Québec. *Effectifs scolaires 1986-1987 et 1988-1989.*

Pour résumer la situation scolaire de la minorité anglophone du Québec, nous faisons part de ses craintes à ce sujet. Auparavant, toutefois, signalons que le ministère de l'Éducation

il faut être admissible en vertu des critères en vigueur, tout comme pour l'inscription dans les écoles anglaises des commissions scolaires. Les institutions privées constituent donc un choix relativement accessible à la minorité de langue anglaise.

Considérant l'ensemble des effectifs en 1986, les effectifs dans les écoles privées (97 183 élèves) constituent 8,6 p. 100 des effectifs provinciaux (1 137 252). En comparaison, dans le réseau des commissions scolaires, 10,7 p. 100 des élèves reçoivent leur instruction dans la langue anglaise alors que dans les institutions privées, 8 612 élèves étudient en anglais, soit 8,9 p. 100 des effectifs de ce réseau. Ces données démontrent que la minorité de langue anglaise privilégie davantage le réseau public des commissions scolaires.

En outre, selon les sources indiquées plus haut, 75,9 p. 100, soit 6 537 des élèves inscrits dans les écoles privées subventionnées de langue anglaise sont effectivement de langue maternelle anglaise; 7,4 p. 100 ou 634 élèves sont de langue maternelle française et 17,3 p. 100 n'ont ni l'anglais ni le français comme langue maternelle. Pourtant, dans le réseau des commissions scolaires, comme nous l'avons vu, 68,5 p. 100 des élèves recevant leur instruction en anglais, sont de langue maternelle anglaise. Par rapport au réseau public, le réseau privé dessert donc une plus grande proportion d'élèves dont la langue maternelle est l'anglais.

Lorsque nous incluons dans les effectifs du tableau II-31 ceux des écoles privées subventionnées dispensant l'instruction à la minorité de langue anglaise (50 écoles), nous notons qu'ils comptent 119 790 élèves, soit l'équivalent de 137,8 p. 100 des enfants de langue maternelle anglaise et 98,6 p. 100 de ceux qui seraient admissibles en vertu de l'alinéa 23(1a).

Voyons ce qui en est des écoles homogènes⁸³ anglaises. Des 374 écoles des commissions scolaires dispensant l'enseignement à la minorité de langue officielle anglaise en 1986-1987, 308 sont homogènes (tableau II-32). Selon les *Effectifs scolaires 1986-1987* (p. 45) du ministère de l'Éducation, les écoles homogènes des commissions scolaires regroupent 99 190 élèves de la maternelle au secondaire V. Ces effectifs comprennent l'équivalent de 114,1 p. 100 de la population de langue maternelle anglaise de 6 à 17 ans. Par ailleurs, les effectifs des écoles homogènes des commissions scolaires dispensant l'instruction à la minorité comptent l'équivalent de 81,6 p. 100 de la population d'âge scolaire qui serait admissible en vertu du critère de l'alinéa 23(1a). Le tableau II-32 en fait état.

Ajoutons maintenant aux effectifs de la minorité anglaise des commissions scolaires ceux des 28 écoles privées homogènes de langue anglaise qui sont subventionnées, soit 6 445 élèves. L'ensemble de ces effectifs (105 635 élèves) compte l'équivalent de 121,5 p. 100 de la population de langue maternelle anglaise de 6 à 17 ans et l'équivalent de 86,9 p. 100 des enfants d'âge scolaire qui seraient admissibles en vertu du critère de l'alinéa 23(1a).

Tableau II-31

Écoles des commissions scolaires et écoles privées subventionnées dispensant l'instruction à la minorité, Québec, 1986

Écoles*	Effectifs (maternelle à secondaire V)** (de 6 à 17 ans)***	Population minoritaire	L.M.A.*** (en %)	Clientèle admissible***	Effectifs C.A.*** (en %)
374	111 178	86 946	127,9	121 513	91,5
424	119 790	86 946	137,8	121 513	98,6

Sources :

- * Ministère de l'Éducation du Québec. *Statistiques de l'éducation*. 1988. p. 10. (Écoles des commissions scolaires seulement).
- ** Ministère de l'Éducation du Québec. *Effectifs scolaires 1986-1987*. Tableau 14.
- *** Voir le tableau II-5. (L'alinéa 23(1)a) ne s'applique pas actuellement au Québec; la clientèle scolaire admissible en vertu de l'article 23 repose sur l'alinéa 23(1)b), l'instruction primaire en anglais reçue par le parent et le paragraphe 23(2), l'instruction primaire ou secondaire reçue par un frère ou une sœur.)

Tableau II-32

Écoles homogènes des commissions scolaires et écoles homogènes privées subventionnées dispensant l'instruction à la minorité, Québec, 1986

Écoles*	Effectifs (maternelle à secondaire V)** (de 6 à 17 ans)***	Population minoritaire	L.M.A.*** (en %)	Clientèle admissible***	Effectifs C.A.*** (en %)
308	99 190	86 946	114,1	121 513	81,6
336	105 635	86 946	121,5	121 513	86,9

Sources :

- * Ministère de l'Éducation du Québec. *Statistiques de l'éducation*. 1988. p. 10. (Écoles des commissions scolaires).
- ** Ministère de l'Éducation du Québec. *Effectifs scolaires 1986-1987*. Tableau 27. (Effectifs des commissions scolaires).
- *** Voir le tableau II-5.

L'adhésion de la minorité anglophone au réseau d'institutions privées subventionnées par le ministère de l'Éducation est symptomatique de l'état de l'éducation de cette minorité. Nous en donnons ici un aperçu pour l'année scolaire 1986-1987; ces informations sont tirées du document *Effectifs scolaires 1986-1987* du ministère de l'Éducation.

Précisons tout d'abord que le réseau d'écoles privées subventionnées destinées à la minorité de langue anglaise est unique au Canada. Les subventions accordées à ces écoles représentent jusqu'à 80 p. 100 des subventions versées aux écoles publiques². De plus, pour y être inscrit,

recoupées généralement par la tranche d'âge des enfants de 6 à 17 ans, nous avons inclus dans les effectifs scolaires québécois ceux de la maternelle⁷⁸.

En 1986-1987, les effectifs des écoles des commissions scolaires dispensant l'instruction en anglais représentent 111 178 élèves (ministère de l'Éducation). La population d'âge scolaire (de 6 à 17 ans) dont l'anglais est la langue maternelle⁷⁹ s'élève à 86 946 enfants, selon le recensement de 1986. Les effectifs scolaires dans la langue de la minorité dans les commissions scolaires comptent donc l'équivalent d'une proportion supérieure (127,9 p. 100) à la population d'âge scolaire de langue maternelle anglaise. D'une part, l'enseignement dans les commissions scolaires comporte une partie des effectifs étudiant en anglais. D'autre part, 8 723 francophones⁸⁰ (7,9 p. 100) et 26 251 allophones (23,4 p. 100) reçoivent légalement leur enseignement en anglais en 1986-1987 (ministère de l'Éducation). De plus, la même source indique que 12 781 élèves de langue maternelle anglaise étudient en français (Effectifs, 1986-1987, p. 27). Une part de ces élèves étudie en français par choix, l'autre n'est pas admissible à l'instruction dispensée à la minorité. La clientèle qui serait admissible en vertu de l'alinéa 23(1)a) compte par ailleurs 121 513 enfants⁸¹, soit l'équivalent de 91,5 p. 100 des effectifs dans les écoles des commissions scolaires dispensant l'enseignement en anglais (tableau II-31).

Rappelons que les effectifs dans les programmes d'instruction en anglais sont légalement constitués en vertu des dispositions de l'alinéa 23(1)b) et du paragraphe 23(2) de la *Charte canadienne des droits et libertés* (qui s'appliquent de fait au Québec). Toutefois, comme nous pouvons le constater, ces critères génèrent à eux seuls un nombre d'inscriptions qui se rapproche de la clientèle qui serait admissible en vertu de l'application du critère de la langue maternelle du parent, soit l'alinéa 23(1)a).

Le statut confessionnel de l'éducation québécoise est au cœur d'une problématique contemporaine, soit l'éducation de la minorité de langue officielle. Nous faisons maintenant état de l'enseignement selon la langue dans les commissions scolaires confessionnelles. Nos données sont tirées du document *Effectifs 1986-1987* du ministère de l'Éducation du Québec (p. 24) pour l'année scolaire 1986-1987. Dans les commissions scolaires catholiques, 95,5 p. 100 des élèves étudient en français, soit 904 765 élèves, pour un total de 947 938 élèves. Par ailleurs, 43 173 élèves y étudient en anglais, soit 4,5 p. 100 des effectifs de ces mêmes commissions scolaires catholiques. Quant aux commissions scolaires protestantes, 80 p. 100 des élèves (65 375) étudient en anglais alors que 16 247 (20 p. 100) y étudient en français. Enfin, quelque 2 630 élèves qui étudient en anglais au Québec fréquentent les trois commissions scolaires multiconfessionnelles.

Ces chiffres nous mènent à deux constatations. D'une part, il existe une polarisation de la population francophone au sein des commissions scolaires catholiques. Les commissions scolaires protestantes sont, quant à elles, moins homogènes puisqu'un enfant sur cinq y étudie en français. D'autre part, une proportion importante des élèves étudiant en anglais, soit 38,8 p. 100, fréquentent des commissions scolaires catholiques où ils se retrouvent avec une très forte majorité francophone.

L'année suivante (1987-1988), les dossiers de 31 enfants ont été étudiés par le ministre. De nouveau, dans tous les cas, l'admission à l'enseignement en anglais a été autorisée. Les motifs suivants sont indiqués dans les *Rapports annuels* de ces années :

- absence d'école française dispensant un enseignement religieux conforme aux traditions et aux croyances des parents;
- état avancé des études en anglais;
- difficultés d'intégration de l'enfant dans le milieu scolaire francophone;
- situation familiale extrêmement difficile.

En outre, l'alinéa 23(1)a) de la *Charte canadienne des droits et libertés*, établissant comme critère d'admissibilité à l'instruction dans la langue de la minorité, « la première langue apprise et encore comprise » par le parent, ne s'applique pas au Québec. En effet, l'article 59 de la *Charte* stipule :

59. (1) L'alinéa 23(1)a) entre en vigueur pour le Québec à la date fixée par proclamation de la reine ou du gouverneur général sous le grand sceau du Canada.

(2) La proclamation visée au paragraphe(1) ne peut être prise qu'après autorisation de l'assemblée législative ou du gouvernement du Québec.

(3) Le présent article peut être abrogé à la date d'entrée en vigueur de l'alinéa 23(1)a) pour le Québec, et la présente loi [peut] faire l'objet, dès cette abrogation, des modifications et changements de numérotation qui en découlent, par proclamation de la reine ou du gouverneur général sous le grand sceau du Canada.

Au Québec, les critères d'admission à l'instruction dans la langue de la minorité concordent donc avec l'alinéa (1)b) et le paragraphe (2) de l'article 23 de la *Charte*. Le présent chapitre ayant pour but d'évaluer, indépendamment des variantes provinciales, la demande de services scolaires à fournir aux minorités qui serait liée à l'application intégrale de l'alinéa 23(1)a), nous présentons donc les données concernant cet alinéa.

En premier lieu, afin de respecter l'approche méthodologique prudente que nous avons adoptée dans notre étude, nous présentons les effectifs des écoles dispensant l'enseignement en langue anglaise au sein des commissions scolaires catholiques ou protestantes. Rappelons que l'article 23 stipule que l'instruction doit être offerte à la minorité à même « les fonds publics ». Sont exclus, pour le moment, les effectifs de toutes les écoles privées⁷⁶.

Nous uniformisons ensuite les données afin de pouvoir les comparer avec celles des autres provinces canadiennes où le primaire et le secondaire totalisent 12 années scolaires. Au Québec, elles totalisent 11 années scolaires⁷⁷. Afin d'obtenir ces 12 années d'études

Tableau II-30

Population totale de langue maternelle anglaise, Québec, 1976, 1981, 1986

L.M.A./ population totale (en %)		L.M.A.*	Population totale
12,8	11,0	800 680	6 234 445
10,4	11,2	706 115	6 438 400
		678 785**	6 532 460
		730 760***	6 532 450

Source : L.M.A. = Langue maternelle anglaise.
* Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
** Langue maternelle unique (française) et double (anglaise et française).
*** Source : Statistique Canada.

Bien que la *Charte de la langue française* déclare que le français est la langue d'instruction au Québec, l'article 79 stipule :

Toutefois, tout organisme scolaire doit, le cas échéant, se prévaloir des dispositions de l'article 450 de la *Loi sur l'instruction publique* pour assurer l'enseignement (en anglais) à tout enfant qui y aurait été déclaré admissible.

Ces critères d'admissibilité ont fait couler beaucoup d'encre; cependant, ils ont été modifiés au cours des années. Avec le *projet de loi n° 63* de 1969, le critère de l'admissibilité à l'instruction en anglais est celui de la demande : tout parent a le choix de faire instruire son enfant en anglais. Peu après, en 1974, le critère d'admissibilité devient la connaissance de la langue de la minorité pour l'enfant. Cependant, « au milieu des années 1970, la vérification de la connaissance de l'anglais s'est avérée une expérience pénible, d'où l'abandon de ce critère » (Pailhé, 1990, p. 17). En 1977, avec la *Charte de la langue française*, les critères d'admissibilité à l'école anglaise se fondent sur l'enseignement en anglais reçu, au primaire, au Québec, par le père ou la mère et par un frère ou une sœur des ayants droit; ces critères sont objectivement vérifiables. Ces critères ont d'ailleurs influencé la rédaction de l'article 23 puisque l'alinéa (1)b) et le paragraphe (2)⁷⁵ en font mention.

Aujourd'hui, le principal critère en vigueur est l'enseignement, au Canada, reçu par le parent, au primaire en anglais, assorti de la langue l'enseignement en anglais d'un frère ou d'une sœur. Ainsi, lorsqu'il y a litige, les questions relatives à ce droit à l'instruction sont remises à une commission d'appel puis au ministre de l'Éducation. Du 1^{er} avril 1986 au 30 mars 1987, les dossiers de 21 enfants ont été soumis au ministre qui, dans tous les cas, a autorisé l'admission à l'enseignement en anglais.

1988 : Le projet de loi n° 107 est adopté en deuxième lecture à l'Assemblée nationale. Il confirme la répartition du territoire québécois en commissions scolaires anglophones et francophones mais protège les commissions confessionnelles existant en 1867. La promulgation en sera faite, par décret de l'Assemblée nationale, après qu'un renvoi à la cour supérieure en aura démontré la constitutionnalité.

1988 : Faisant suite au jugement de la Cour suprême du Canada, le projet de loi n° 178 est adopté. Cette loi consacre la primauté de l'affichage en français.

B. LE CONTEXTE ACTUEL

1. Statistiques

La province de Québec couvre 33 p. 100 du territoire canadien. À l'origine, son territoire est passé de colonie de la France à celle de l'Angleterre. Quand, après la conquête, les premiers immigrants d'origine britannique ou de Nouvelle-Angleterre se sont installés au Québec, la demande d'écoles n'a pas tardé à se faire sentir. C'était le début d'un système confessionnel qu'a entériné la *Loi constitutionnelle de 1867* et qui, encore aujourd'hui, est au cœur de questions sociales et juridiques.

La population anglophone du Québec a subi des modifications importantes au cours des deux dernières décennies. Elle s'élève à 678 785 en 1986⁷³, soit 10,4 p. 100 de la population totale de la province. Cette proportion a diminué de 2,4 points depuis 1976 et de 0,6 point depuis 1981. En effet, l'exode d'anglophones vers la fin des années 1970 a contribué à une diminution, en dix ans, de 121 895 personnes résidant au Québec dont l'anglais est la langue maternelle.

À l'inverse des minorités francophones du Canada, la minorité de langue maternelle anglaise du Québec est inférieure au nombre de personnes dont l'anglais est la langue parlée à la maison. Selon Statistique Canada (1986), 12,3 p. 100 de la population du Québec parlent principalement l'anglais à la maison en 1986 (données ajustées), soit 796 695 personnes, c'est-à-dire 117 910 personnes de plus que le nombre de personnes dont l'anglais est la langue maternelle.

Par ailleurs, en compilant les choix de langue maternelle double (française et anglaise) avec ceux de langue maternelle unique (anglaise), la population pouvant se déclarer de langue maternelle anglaise, sans que ce soit son unique langue maternelle, s'élève à 730 760 personnes⁷⁴ (tableau II-30), soit 11,2 p. 100 de la population totale de la province. Les bassins de population de la minorité de langue anglaise sont situés principalement à Montréal et dans ses banlieues, dans l'Estrie, l'Outaouais, à Québec, en Gaspésie et en

Abitibi-Témiscamingue.

- 1963 : Le rapport Parent recommande une refonte du système scolaire : la déconfessionnalisation des structures, la création de commissions scolaires unifiées et intégrées (sans distinction de langue ou de religion) et la création de comités d'école.
- 1964 : Le ministère de l'Éducation est établi. Les revenus provenant des taxes sont distribués entre les commissions scolaires.
- 1964 : L'opération 55 est lancée en vue de créer 55 commissions scolaires régionales offrant l'enseignement secondaire aux clientèles dites « catholiques ».
- 1965 : Le Règlement n° 1 approuve la structure du système de l'éducation fondé sur l'éducation primaire et secondaire.
- 1969 : Par le *projet de loi n° 63*, le français devient la langue de travail du Québec. Cette loi donne aux parents le droit de choisir la langue d'instruction de leurs enfants.
- 1969 : Le *projet de loi n° 62* prévoit la création de commissions scolaires unifiées. Ce projet de loi n'a jamais été adopté, le gouvernement de l'Union nationale ayant perdu ses élections.
- 1969 : Le *projet de loi n° 27* réduit le nombre de commissions scolaires en dehors de l'Île de Montréal. Elle passent de 1 100 à 250 et sont regroupées selon des paramètres confessionnels. De plus, ce projet de loi crée les comités d'école, reconnaissant ainsi l'importance des parents dans la gouverne des affaires scolaires.
- 1972 : Le *projet de loi n° 71* réduit le nombre de commissions scolaires de l'Île de Montréal de 33 à 8 : six catholiques et deux protestantes.
- 1974 : À la suite des recommandations de la Commission Gendron, le *projet de loi n° 22* fait du français la langue officielle du Québec. L'inscription aux écoles anglaises est restreinte aux enfants qui possèdent déjà une connaissance suffisante de cette langue.
- 1977 : La *Charte de la langue française* connue sous le nom de loi 101 restreint l'inscription à l'école anglaise aux enfants dont les parents ont reçu la majorité de leur instruction primaire dans cette langue ou dont un frère ou une sœur a reçu l'instruction dans cette langue.
- 1982 : Le *Livre blanc* propose une plus grande autonomie pour les comités de parents. Il veut également instaurer des commissions scolaires linguistiques et accorder le statut de corporation juridique à l'école.
- 1984 : Le *projet de loi n° 3* réorganise le territoire du Québec en commissions scolaires anglophones et francophones.
- 1984 : La Cour suprême du Canada déclare qu'une section de la loi 101 est inconstitutionnelle parce qu'elle ne permet pas aux anglophones du Canada de faire instruire leurs enfants en anglais en limitant l'accès de l'école anglaise aux enfants dont les parents ont reçu leur instruction primaire en anglais au Québec.
- 1985 : Le *projet de loi n° 3* est jugé inconstitutionnel par la cour supérieure du Québec puisqu'il ne respecte pas les dispositions de l'article 93 de la *Loi constitutionnelle de 1867*.

VII. QUÉBEC

A. HISTORIQUE

- 1608 : Peu après la fondation de Québec, les premières écoles françaises apparaissent sous forme de missions pour la conversion des indigènes et l'instruction aux enfants des premiers habitants.
- 1635 : Le collège des Jésuites est fondé à Montréal. Il devient plus tard l'Université de Montréal.
- 1759 : Le territoire du Québec devient colonie anglaise.
- 1824 : La *Loi des écoles de la fabrique* reconnaît le principe de l'autorité locale. Chaque paroisse est autorisée à consacrer le quart de son budget à la création et à l'entretien des écoles.
- 1841 : Par suite du rapport Durham, la *Loi sur l'éducation* reconnaît le système des écoles publiques offrant deux programmes religieux : catholique et protestant.
- 1852 : Les universités Laval, McGill et Bishop's obtiennent leur charte.
- 1857 : Trois écoles normales ouvrent leurs portes pour la formation d'enseignants : deux sont catholiques et l'autre est protestante.
- 1861 : La loi scolaire établit deux systèmes au Bas-Canada : un pour la campagne, un autre pour Québec et Montréal. Le système rural prévoit le droit à la dissidence religieuse.
- 1867 : Le Bas-Canada devient province canadienne. Les droits confessionnels sont entérinés.
- 1869 : La première loi sur l'instruction publique distingue plus nettement entre les secteurs catholique et protestant et leur reconnaît une plus grande autonomie en créant deux comités confessionnels provinciaux.
- 1875 : Le ministère de l'Instruction publique est aboli. L'autorité centrale en matière d'enseignement devient le Conseil de l'Instruction publique. Les comités catholique et protestant du conseil sont responsables de leur enseignement respectif.
- 1896 : Le collège Loyola est fondé; il s'agit d'une école privée pour les catholiques de langue anglaise.
- 1903 : L'assemblée législative adopte une loi clarifiant le statut des Juifs : ils sont considérés comme protestants.
- 1928 : Un comité semi-autonome pour gérer les affaires des anglophones catholiques est établi au sein de la Commission des écoles catholiques de Montréal. La loi de 1903 est déclarée *ultra vires* par le Conseil privé de Londres. Seuls les catholiques et les protestants ont des garanties constitutionnelles, mais le gouvernement accorde subséquentement des fonds supplémentaires pour l'enseignement aux étudiants Juifs au sein des commissions scolaires protestantes.
- 1931 : Formation du premier « *high school* » anglophone catholique public : D'Arcy McGee.
- 1943 : L'instruction devient obligatoire.

programmes universitaires de langue française; créer un fonds provincial au service des chercheurs francophones.

Ce programme fort ambitieux, qui permettrait un ensemble de services complémentaires par et pour les Franco-Ontariens, structure leurs revendications pour les années à venir.

C. RÉSUMÉ

Comme le montre l'histoire de l'éducation en langue française de l'Ontario, la minorité de langue officielle y revendique depuis fort longtemps des mesures législatives assurant la survie de sa langue et de sa culture. Son cheminement s'est fait lentement, par gains, par revendications et par protestations. Des services éducatifs dispensant l'instruction, les requêtes se sont orientées vers les modèles de gestion, surtout depuis la formation, en 1974, de « modules » d'enseignement en langue française et de comités consultatifs ayant droit de regard sur ces modules. Aujourd'hui, les modules d'enseignement sont devenus des « sections » fournissant ainsi un modèle de gestion appelé « représentation proportionnelle et garantie ».

Le bilan que nous avons fait de l'enseignement dans la langue de la minorité a démontré qu'en 1986, l'équivalent de 57,1 p. 100 des enfants d'âge scolaire (de 6 à 17 ans) admissibles en vertu de l'alinéa 23(1)a) étudiait dans des programmes d'enseignement à la minorité. Or, ces effectifs de 77 412 enfants de la 1^{re} à la 12^e année regroupent l'équivalent de 109,9 p. 100 des enfants de 6 à 17 ans dont le français est la langue maternelle (70 462). Ainsi, le système ontarien dessert une part importante de la population de langue maternelle. Toutefois, une étude ultérieure devrait démontrer dans quelles proportions les services fournis à la minorité de langue française desservent effectivement les enfants de cette minorité et non les enfants de la majorité anglophone. D'autres études devraient également être faites afin d'évaluer dans quelles proportions, en Ontario, les ayants droit qui forment la clientèle admissible en vertu de l'alinéa 23(1)a) pourraient réalistement se prévaloir de services de l'instruction en français.

Les progrès observés entre les années scolaires 1986-1987 et 1988-1989 sont de l'ordre de 1,7 p. 100 (1 342 élèves) pour les effectifs de la 1^{re} à la 12^e année dans les programmes de la minorité. Ce sont les écoles catholiques homogènes qui ont connu la plus grande augmentation pendant cette période (243,4 p. 100) et ce, surtout grâce au financement public enfin fourni à ce type d'écoles.

Quant à la gestion scolaire, les modèles représentatifs sont originaires de l'Ontario. Celui instauré par le *projet de loi n° 75*, la représentation proportionnelle et garantie, est mis en vigueur dans 56 commissions scolaires de la province. C'est toutefois une réorganisation des frontières scolaires qui pourrait permettre une gestion complète par le système de conseils scolaires. D'ailleurs, ce modèle vient d'être adopté pour les régions métropolitaines de Toronto et d'Ottawa par la création de conseils scolaires homogènes francophones et c'est ce que revendiquent les associations minoritaires pour les régions à grande concentration francophone.

En résumé, le système de gestion des francophones est réparti en :

- deux conseils de l'éducation au palier régional : Ottawa-Carleton et Toronto;
- 11 conseils d'éducation où les francophones sont majoritaires : neuf séparés catholiques et deux publics;
- 56 conseils de l'enseignement en français au sein de conseils de l'éducation anglophones : 30 séparés catholiques et 26 publics;
- des comités consultatifs locaux.

Quant à la francophonie de l'Ontario, elle s'est dotée d'une kyrielle d'organisations dont :

- l'Association canadienne-française de l'Ontario;
- l'Association française des Conseils scolaires de l'Ontario;
- l'Association des enseignants franco-ontariens;
- l'Association des surintendantes et des surintendants franco-ontariens;
- la Fédération des associations de parents et d'instituteurs de langue française d'Ontario;
- la Fédération des élèves du secondaire franco-ontarien;
- le Centre franco-ontarien de ressources pédagogiques.

Ce réseau d'associations comporte une infrastructure francophone qui vient appuyer les revendications scolaires. Le Conseil de l'éducation franco-ontarienne a d'ailleurs, à ce sujet, préparé un plan directeur concernant les cinq secteurs de l'éducation franco-ontarienne. Il formule des recommandations dont nous citons les principales :

- *secteur de l'école* : préciser une pédagogie du français; affirmer la gestion scolaire et l'homogénéité des acteurs; ouvrir l'école à la communauté;
- *secteur de l'enseignement préscolaire et garderie* : faire reconnaître la nécessité de ce service par le gouvernement; favoriser la création de garderies de langue française; élaborer et diffuser du matériel didactique préscolaire;
- *secteur de l'enseignement élémentaire et secondaire* : créer, au ministère de l'Éducation, une direction des programmes en langue française; revoir avec le ministère le programme de formation des enseignants; améliorer les services de perfectionnement professionnel; élaborer des mesures de gestion;
- *secteur collégial* : favoriser l'autogestion par les francophones; mettre sur pied un collège de langue française dans l'est, le nord et le sud de la province; proposer la création d'une direction des affaires collégiales de langue française au ministère;
- *secteur de l'enseignement universitaire* : faire accorder la priorité, par le gouvernement, à la création d'un réseau universitaire de programmes et de services en français; établir, dans chaque région, des services et des

Tout domaine ne relevant pas des questions exclusives énoncées ci-dessus fait partie du domaine décisionnel commun entre la minorité et la majorité. En particulier, la loi stipule que les questions suivantes sont soumises à un partage des décisions au sujet des services centralisés :

- les salaires, les bénéfices, le perfectionnement professionnel autre que celui du personnel géré par la section minoritaire;
- le maintien et l'exploitation des services et du matériel requis pour les édifices scolaires;
- l'approvisionnement autre que le matériel didactique;
- le transport;
- les fonds de réserve et les fonds courants;
- le bureau central et ses services;
- les améliorations autres que l'aménagement pour les écoles, les livres de bibliothèque et le matériel didactique. (p. 17)

Depuis l'entrée en vigueur du *projet de loi n° 75*, le 1^{er} octobre 1986, 56 conseils scolaires ont établi des CELF, soit 30 dans les conseils d'écoles séparées catholiques et 26 dans les conseils d'éducation publics. De plus, 11 CELA ont été créés dans des conseils scolaires dont la majorité est francophone, soit neuf dans le secteur séparé catholique et deux dans le secteur public.

Outre les CELF, qui gèrent l'éducation francophone, il existe deux conseils scolaires francophones. En 1986, le *projet de loi n° 75* apporte des modifications à la *Loi sur la municipalité de la communauté urbaine de Toronto* et institue un Conseil des écoles françaises publiques du Grand Toronto. Entré en vigueur le 1^{er} janvier 1989, il fait partie d'une fédération de sept conseils d'éducation dits « de secteurs » de la région métropolitaine de Toronto qui est ainsi gérée par une structure unique à deux paliers. Le conseil francophone garde les mêmes pouvoirs et devoirs que les autres conseils scolaires.

Le deuxième conseil scolaire francophone, créé en vertu du *projet de loi n° 109*, celui d'Ottawa-Carleton, reprend la structure des CELF de la représentation proportionnelle et garantit et l'applique au système confessionnel afin de tenter de faire respecter les droits confessionnels entérinés par l'article 93 de la *Loi constitutionnelle de 1867*. Il comprend deux sections, une catholique et une publique. La section publique est gérée par huit membres élus parmi les résidents déclarés francophones. Pour sa part, la section catholique est gérée par 14 conseillers. Les sections catholique et publique ont des pouvoirs accrus si on les compare aux sections de langue française et de langue anglaise; ils fonctionnent, à toutes fins pratiques, comme des conseils scolaires.

Enfin, le *projet de loi n° 75* prévoit un mécanisme local, le comité consultatif, chargé de répondre aux besoins d'un ou de plusieurs enfants de son territoire. Ce comité consultatif doit être formé si au moins dix contribuables en font la demande.

La structure des 182 conseils scolaires de la province s'est compliquée par l'avènement, en 1986, de Conseils de l'enseignement en langue française (CELF) ou anglaise (CELA) gérant des sections de langue minoritaire. C'est par ce mécanisme que nous décrivons les pouvoirs des conseils scolaires. Lorsqu'un conseil de l'éducation ne possède pas de section de langue française (ou anglaise), il est responsable de toutes les tâches et peut se prévaloir de tous les pouvoirs, tant de ceux de la section minoritaire que des pouvoirs du Conseil plénier (section de langue minoritaire et groupe linguistique majoritaire).

Le projet de loi n° 75 établit le mécanisme de gestion des sections de langue minoritaire (français ou anglais) 1) partout où un conseil scolaire est chargé des classes ou des écoles de la minorité ou encore 2) là où il achète les services pour une minorité de plus de 300 élèves ou 10 p. 100 de sa population étudiante. Ce système assure une représentation au sein des structures existantes sans changer la carte scolaire existante de l'Ontario. Il s'agit d'une mesure médiane qui tente de répondre aux besoins de gestion des Franco-Ontariens en réduisant au minimum la redistribution territoriale.

Le nombre des membres du conseil de l'enseignement gérant la section de langue minoritaire est calculé selon une formule à la fois proportionnelle et garantie :

- la même proportion de membres élus que celle d'élèves résidents inscrits par rapport au nombre total d'élèves pour l'ensemble du conseil scolaire;
- au moins trois membres élus.

Le nombre de membres du conseil d'éducation demeure le même que celui auquel il a toujours eu droit pour sa région, sauf si le nombre de conseillers minoritaires, calculé selon la représentation, est inférieur à trois. Dans ce cas, le nombre total de conseillers est augmenté de la différence. Les conseillers minoritaires, pour être élus, sont soumis aux mêmes critères d'admissibilité que les conseillers majoritaires; de plus, ils jouissent des droits conférés par les paragraphes 23(1) et (2) de la *Charte* et sont tenus de voter uniquement pour les membres de la section minoritaire.

Le projet de loi n° 75 distingue les champs de décision réservés exclusivement aux membres qui forment les CELF ou les CELA et qui ainsi gèrent l'éducation de la minorité par :

- la planification et l'établissement des unités d'enseignement en français, incluant la préparation et la soumission des prévisions de dépenses en capital;
- l'administration et la fermeture des unités d'enseignement en français;
- les comités d'admission;
- la planification, l'établissement et le maintien des programmes et des cours pour les unités d'enseignement en français;
- le recrutement et l'affectation du personnel enseignant, administratif et superviseur;
- les ententes avec d'autres conseils scolaires. (p. 14)

la Loi sur le ministère de l'Éducation, le ministre, sous réserve de l'approbation du lieutenant-gouverneur en conseil, peut établir des règlements sur les questions suivantes :

- l'organisation, l'établissement et l'administration des écoles;
- la répartition et la distribution des subventions;
- l'établissement et la direction des écoles de formation des enseignants;
- les ententes avec d'autres ministères;
- les bibliothèques;
- l'enregistrement des écoles privées.

Par ailleurs, il a le pouvoir de :

- prescrire les programmes d'études qui doivent être enseignés et ceux qui peuvent l'être aux cycles primaire, moyen, intermédiaire et supérieur;
- établir les procédures d'approbation du matériel didactique;
- acheter et distribuer les manuels;
- ordonner la fermeture d'une classe ou d'une école pendant une période déterminée.

Au palier provincial, les quatre divisions susmentionnées sont chargées de répondre aux besoins des francophones. Un sous-ministre adjoint de l'éducation franco-ontarienne remplit une fonction consultative auprès du ministre; son bureau fournit les services d'une douzaine de personnes, dont six agents d'éducation. De plus, six bureaux régionaux embauchent une soixantaine d'éducateurs chargés de tenir directement avec les conseils scolaires des consultations en matière de mise en œuvre et d'implantation de programmes en français. Le ministère de l'Éducation de l'Ontario n'a donc pas adopté de formule parallèle à la structure majoritaire pour l'éducation francophone minoritaire.

Le palier régional de gestion scolaire repose sur un système de conseils scolaires distribués sur deux cartes : l'une publique, l'autre séparée (en général composée de secteurs catholiques). Les conseils scolaires sont répartis en fonction de l'unité territoriale, soit :

- 77 conseils d'éducation pour une division scolaire : conseils publics chargés d'écoles primaires ou secondaires;
- 49 conseils intégrés des écoles catholiques séparées, regroupant des zones d'écoles séparées dans un comté ou un district;
- 25 conseils de districts des écoles publiques;
- 11 conseils des écoles séparées : 10 catholiques et 1 protestante;
- 1 conseil d'école secondaire;
- 19 autres conseils scolaires : 11 de la défense nationale et 8 d'hôpitaux et de centres de traitement.

Les membres d'un conseil de l'éducation sont élus selon une formule fondée sur la population du territoire géré par le conseil. Les membres, qui sont des résidents âgés d'au moins 18 ans, sont tous élus pour une période de trois ans.

Nous constatons également une augmentation totale de 12 écoles dispensant l'instruction à la minorité entre 1986-1987 et 1988-1989 et une augmentation nette de 18 écoles homogènes en deux ans. Les effectifs ont augmenté de 1,7 p. 100, soit 1 342 élèves, dans tous les secteurs. Notons également une hausse de 20,1 p. 100 des effectifs dans les écoles publiques élémentaires homogènes (744 élèves) et une augmentation de 5 p. 100 dans les écoles homogènes en général.

Enfin, pour l'année scolaire 1989-1990, Statistique Canada estime à 78 120 élèves les effectifs de la 1^{re} à la 12^e année dans les écoles offrant des programmes d'enseignement à la minorité francophone, soit une baisse de 0,1 p. 100 par rapport aux effectifs de 1988 et à ceux de 1986.

Tableau II-29

Comparaison des effectifs et des écoles publiques, Ontario, 1986-1987, 1988-1989

	1986-1987		1988-1989		Augmentation Écoles Effectifs (en %)	
Écoles élémentaires : 1 ^{re} à 8 ^e année	18	3 988	24	4 732	33,3	20,1
• Publiques homogènes						
• Publiques mixtes	1	78	3	144	200,0	84,6
• Catholiques homogènes	251	50 206	258	50 646	2,8	0,9
• Catholiques mixtes	6	519	2	177	(-66,6)	(-65,8)
Écoles secondaires : 9 ^e à 12 ^e année	33	16 023	27	12 775	(-18,2)	(-20,3)
• Publiques homogènes						
• Publiques mixtes	27	4 088	20	2 005	(-25,9)	(-50,9)
• Catholiques homogènes	11	2 338	22	8 029	100,0	243,4
• Catholiques mixtes	4	172	7	246	75,0	43,0
• Total : Écoles homogènes	313	72 555	331	76 182	5,6	5,0
Total : Toutes les écoles	351	77 412	363	78 754	3,4	1,7

Source : Ministère de l'Éducation de l'Ontario, *Statistiques sur l'éducation en Ontario*, 1986 et 1988.

Notons enfin que le réseau d'écoles privées (500 écoles) de l'Ontario compte quatre écoles françaises. Elles ne sont pas subventionnées par le ministère de l'Éducation de cette province et elles sont situées dans la région d'Ottawa.

2. Description du système scolaire

Le système d'éducation ontarien est décentralisé. Au ministère de l'Éducation, les services sont répartis parmi les divisions suivantes : 1) l'administration, 2) la planification et les politiques, 3) les programmes d'enseignement et 4) les services éducatifs. Aux termes de

Tableau II-27

Écoles publiques dispensant l'instruction à la minorité, Ontario, 1986

Écoles*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
351	77 412	70 462	109,9	135 612	57,1

Sources :

* Ministère de l'Éducation de l'Ontario. *Statistiques sur l'éducation en Ontario*, 1986.
** Voir le tableau II-5.

Tableau II-28

Écoles publiques homogènes, Ontario, 1986

Écoles homogènes*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
313	72 555	70 462	103,0	135 612	53,5

Sources :

* Ministère de l'Éducation de l'Ontario. *Statistiques sur l'éducation en Ontario*, 1986.
** Voir le tableau II-5.

Par ailleurs, le nombre d'enfants d'âge scolaire (de 6 à 17 ans) admissibles en vertu de l'alinéa 23(1)a) de la *Charte* est de 135 612 (tableau II-27). Les écoles dispensant l'instruction à la minorité comptent une proportion inférieure d'effectifs au nombre de ces ayants droit, soit l'équivalent de 57,1 p. 100. Ce pourcentage constitue donc un maximum puisque les enfants inscrits ne sont pas tous admissibles en vertu de l'article 23.

La situation dans les écoles homogènes²² est présentée au tableau II-28. En 1986-1987, les 313 écoles homogènes offrent l'instruction à 72 555 élèves de la 1^{re} à la 12^e année. Ces effectifs touchent l'équivalent de 103 p. 100 de la population d'âge scolaire, de langue maternelle française. Par ailleurs, ils représentent l'équivalent de 53,5 p. 100 de la clientèle admissible en vertu de l'alinéa 23(1)a).

Les effectifs de la minorité francophone sont répartis entre les conseils scolaires catholiques et publics. Afin de suivre l'évolution de chacun de ces secteurs, nous détaillons, au tableau II-29, les effectifs des années scolaires 1986-1987 et 1988-1989. Grâce au financement complet du système d'écoles secondaires catholiques instauré pendant cette période, les effectifs dans ce secteur secondaire ont connu des augmentations de l'ordre de 243,4 p. 100 dans les écoles homogènes (5 691 élèves) et de 43 p. 100 dans les écoles mixtes (74 élèves).

Du point de vue démographique, des regroupements francophones se retrouvent surtout à Toronto et Timiskaming. La minorité francophone de l'Ontario représente le plus grand regroupement de personnes de langue maternelle française au Canada, à l'exception de ceux qui habitent le Québec : plus d'un demi-million de personnes. Le poids démographique et la stabilité du nombre de cette minorité permettent de la comparer à la minorité francophone du Nouveau-Brunswick et aux anglophones du Québec. Cependant, son pourcentage en fonction de la population totale de l'Ontario (5,8 p. 100) (tableau II-26, Edouard (5,1 p. 100) et à la Nouvelle-Écosse (4,5 p. 100).

La loi scolaire de l'Ontario donne à chaque enfant le droit à l'instruction dans sa langue maternelle, française ou anglaise. En effet, chaque conseil scolaire doit fournir l'instruction ou encore acheter les services d'instruction à un autre conseil scolaire. Le système d'écoles dispensant l'enseignement à la minorité de langue officielle de l'Ontario est le deuxième en importance au Canada; seuls les anglophones du Québec ont des effectifs supérieurs.

En 1986, 77 412 élèves reçoivent l'instruction en français dans des programmes pour la minorité de langue officielle de la 1^{re} à la 12^e année dans les écoles des commissions scolaires. Afin d'uniformiser les données et de permettre une comparaison, à l'échelle du Canada, des enfants d'âge scolaire (de 6 à 17 ans⁶⁹), nous avons uniquement tenu compte des effectifs de la 1^{re} à la 12^e année, retranchant ainsi ceux de la maternelle, de la prématernelle et de la 13^e année (tableau II-27). Ces effectifs des programmes dispensant l'instruction à la minorité sont supérieurs au nombre d'enfants d'âge scolaire (de 6 à 17 ans) dont le français est la langue maternelle⁷⁰. Nous avons établi le nombre de ces enfants à 70 462⁷¹.

La proportion supérieure des élèves inscrits dans les programmes d'enseignement à la minorité nous porte à deux constatations. D'une part, les 351 écoles franco-ontariennes homogènes ou mixtes (puisqu'elles se sont elles qui dispensent l'instruction à la minorité) pourraient théoriquement servir de mécanisme de récupération d'enfants qui, autrement, auraient été assimilés, n'ayant pas appris la langue maternelle de leur(s) parent(s). En effet, si le nombre d'enfants inscrits est supérieur au nombre d'enfants dont le français est la langue maternelle, nous pouvons presumer que ceux qui n'ont pas appris le français à la maison peuvent l'apprendre à l'école, comme le permet l'article 23. Toutefois, nous savons que ces écoles et ces programmes ne regroupent pas seulement des enfants de la minorité de langue française. En effet, dans certaines écoles et programmes, beaucoup d'enfants de la majorité anglophone étudient le français au sein de programmes destinés à la minorité. Les effectifs scolaires de la minorité se trouvent ainsi augmentés sans que les services fournis profitent réellement à la minorité francophone.

1988 : Le projet de loi n° 109 instaure le Conseil scolaire de langue française d'Ottawa-Carleton.
1989 : Le projet de loi n° 8 entre en vigueur. Cette Loi sur les services en français a pour but d'assurer l'accès à des services gouvernementaux en français dans 22 régions désignées en raison de l'importance numérique de leur population francophone.

B. LE CONTEXTE ACTUEL

1. Statistiques

Lors de sa création en 1791, l'Ontario (alors le Haut-Canada) compte déjà une population de 50 000 immigrants. La plupart sont des loyalistes venus des États-Unis. Les autres viennent surtout des Îles britanniques. La proximité du Bas-Canada (le Québec) et l'émigration provenant de ce territoire ont cependant engendré une population francophone de 5 à 6 p. 100. En 1986, 484 265 personnes se déclarent de langue maternelle française⁶⁷, soit 5,3 p. 100 de la population totale de la province. Cette proportion de la population de langue maternelle française par rapport à celle de la population de la province a diminué de 0,3 point depuis 1976 (tableau II-26).

Tableau II-26

Population totale de langue maternelle française, Ontario, 1976, 1981, 1986

Population totale	L.M.F./ population totale (en %)
1976 8 264 465	5,6
1981 8 625 105	5,5
1986 9 101 690	5,3
1986 9 101 695	5,8

* Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
** Langue maternelle unique (française) et double (anglaise et française).

Source : Statistique Canada.

Cependant, en compilant les choix de double langue maternelle (française et anglaise) avec ceux de langue maternelle unique (française), nous constatons que la population de langue maternelle française représente 5,8 p. 100 de la population totale de la province, soit 529 270 personnes⁶⁸. Ces derniers chiffres reflètent mieux la communauté visée par l'article 23 de la Charte qui confère des droits aux parents de langue maternelle française sans exiger que ce soit leur unique langue maternelle.

- pour conseiller les commissions et les conseils scolaires publics anglophones sur les questions relatives à l'enseignement en français au niveau secondaire. Les 1 358 conseils scolaires sont réorganisés en 192 unités administratives; dans plusieurs régions, les francophones perdent la gestion de leurs écoles que leur permettait une structure de petites unités locales.
- 1972 : Le Conseil supérieur des écoles de langue française est créé pour aviser le ministre dans tous domaines relatifs à l'enseignement à la minorité.
- 1974 : Les commissions scolaires doivent créer des modules scolaires de langue française (MSLF), c'est-à-dire des classes, des groupes de classes ou des écoles si le nombre est suffisant. Un comité consultatif doit être formé là où un module existe.
- 1976 : La commission Mayo propose la création d'un conseil scolaire catholique de langue française pour la région d'Ottawa-Carleton. Cette recommandation est rejetée par le ministre de l'Éducation en 1979.
- 1977 : La Loi sur l'éducation institue la Commission ontarienne des langues d'enseignement. Il s'agit d'un comité consultatif dont le rôle est de régler les différends entre les comités consultatifs minoritaires et les conseils scolaires. Un sous-ministre adjoint à l'Éducation en langue française est nommé.
- 1979 : Faisant suite à son *Livre vert* de février, le gouvernement propose pour la première fois dans un document officiel la création de « sections » linguistiques au sein des conseils scolaires.
- 1982 : Le Rapport du comité mixte sur la gestion des écoles élémentaires et secondaires de langue française recommande deux modèles de gestion : le conseil scolaire homogène et la représentation proportionnelle et garantie.
- 1983 : Le Livre blanc du gouvernement propose des amendements à la Loi sur l'éducation en éliminant la restriction « là où le nombre le justifie » et en élaborant des sections de langue minoritaire au sein des conseils scolaires majoritaires.
- 1984 : La cour d'appel de l'Ontario rend son jugement. Les francophones de l'Ontario ont droit (1) à des services éducatifs de qualité égale à ceux de la majorité anglophone et (2) de fréquenter des écoles qui reflètent la culture de la minorité. Le jugement confirme le droit des Franco-Ontariens à la gestion de leurs propres écoles.
- 1986 : Le comité d'étude pour l'éducation en langue française d'Ottawa-Carleton recommande qu'un conseil scolaire de langue française soit composé de deux secteurs : l'un catholique romain, l'autre public.
- 1986 : Le projet de loi n° 75 est promulgué. Il est à l'origine des sections de langue minoritaire au sein des conseils scolaires et établit ainsi la représentation proportionnelle et garantie. De plus, il fonde un conseil scolaire francophone homogène pour la région métropolitaine de Toronto.
- 1988 : Le « Conseil des écoles françaises de la communauté urbaine de Toronto » est créé le 1^{er} décembre. Il entre en vigueur le 1^{er} janvier 1989.

- 1807 : La première loi scolaire assure le financement des écoles publiques établies dans les huit districts scolaires du Haut-Canada et permet l'instruction en français, en anglais ou en allemand.
- 1841 : L'Acte d'Union permet la création de conseils scolaires séparés qui sont catholiques.
- 1851 : Un règlement confirme l'usage exclusif du français ou de l'anglais dans les écoles du Haut-Canada.
- 1859 : Le *Common School Act* établit des écoles primaires (de la 1^{re} à la 9^e année) non confessionnelles financées par l'État et par les taxes locales.
- 1863 : Le *Separate School Act* garantit le droit et la gestion des écoles élémentaires confessionnelles. Les syndicats d'écoles séparées ont les mêmes devoirs et responsabilités que ceux des écoles publiques.
- 1867 : L'Ontario devient province canadienne. Les droits des écoles séparées sont enchâssés dans l'article 93 de la *Loi constitutionnelle de 1867*.
- 1871 : Le *High Schools Act* favorise la création d'écoles secondaires publiques, anglaises seulement.
- 1885 : Un règlement fait de l'anglais une matière obligatoire dans toutes les écoles publiques.
- 1889 : Un règlement incorporé au *Public School Act* établit l'usage exclusif de l'anglais comme langue d'instruction sauf si l'élève ne comprend pas l'anglais. Cette exception sert d'incitatif à la création d'écoles « bilingues » dans les régions à forte concentration francophone.
- 1912 : La Commission Merchant recommandant la transition graduelle du français à l'anglais comme langue d'enseignement dans les écoles bilingues (dites anglaïses-françaises) pour francophones.
- 1913 : Le Règlement n° 17 fait de l'anglais la seule langue d'instruction après la 1^{re} et la 2^e année. Pour les années suivantes, le français est permis à raison d'un maximum d'une heure par jour.
- 1927 : Le rapport de la Commission Merchant recommandant cette fois l'instruction dans la langue maternelle pour les élèves francophones tout en précisant la nécessité de connaître l'anglais à la fin de la 8^e année. Même si la loi ne changera pas avant 1944, la situation des francophones s'améliore.
- 1927 : Le jugement de Tiny Township confirme que le gouvernement provincial n'est pas tenu de subventionner les écoles séparées après la 10^e année.
- 1933 : Les subventions fondées sur le rajustement des taxes des personnes morales contribuent à une meilleure distribution des fonds publics entre les écoles élémentaires publiques et séparées (tant francophones qu'anglophones) avant la 10^e année.
- 1966 : L'instruction en français est permise pour le latin, l'histoire et la géographie. 1968 : *Les projets de loi n°s 141 et 140* autorisent l'instruction en français dans toutes les matières et à tous les niveaux. L'existence d'écoles primaires de langue française au sein des commissions scolaires publiques et séparées est reconnue et la création d'écoles secondaires de langue française est autorisée. Les comités consultatifs de langue française (CCLF) sont également créés

demandé à la cour d'indiquer en quoi consiste le droit de faire instruire ses enfants « dans des établissements d'enseignement de la minorité linguistique » et de dire si les articles 23 et 15 de la *Charte* accordent un droit de gestion et de contrôle sur ces établissements. Les audiences ont été tenues à l'automne 1988 et les avis de chaque juge, rendus le 6 février 1990.

Les avis souvent contradictoires des juges rendent difficile l'application concrète de l'article 23. Dans l'ensemble, les juges préconisent une interprétation « flexible » qui, au Manitoba, perpétue le climat d'hésitation quant à la reconnaissance des droits conférés par l'article 23.

C. RÉSUMÉ

Historiquement, la minorité française du Manitoba a été durement touchée par l'élimination, en 1890, du système scolaire catholique et par les lois empêchant l'instruction en français (1916 et 1952). Depuis 1967 cependant, une amélioration graduelle des services d'enseignement et de ceux du ministère de l'Éducation est manifeste.

Au chapitre de l'instruction, nous avons noté que 34 écoles dispensent l'instruction dans des programmes de la minorité à 5 211 élèves en 1986. Ces effectifs constituent l'équivalent de 29,4 p. 100 des enfants admissibles en vertu de l'article 23(1)a) de la *Charte*. Le nombre de ces enfants admissibles a été établi à 17 754 enfants d'âge scolaire (de 6 à 17 ans). Les écoles homogènes regroupent, pour leur part, l'équivalent de 18,2 p. 100 de la clientèle admissible, soit 3 230 élèves. Les causes de l'écart que nous constatons entre les effectifs de ces écoles et la clientèle admissible de même que l'efficacité du système d'enseignement partiel du Manitoba (50 p. 100 ou moins de la journée scolaire dans la langue de la minorité) devraient faire l'objet d'une étude plus approfondie.

La minorité de langue officielle française est invitée, pour le moment, à se prévaloir du mécanisme des comités consultatifs pour obtenir un droit de regard sur l'instruction dans les programmes de la minorité. Par ailleurs, un modèle de gestion parallèle à la structure majoritaire est proposé par le Comité directeur des structures scolaires. Avec l'appui de six organismes franco-manitobains, ce comité propose d'instaurer, au Manitoba, une commission scolaire provinciale assortie de mécanismes locaux et régionaux. Ce modèle est à l'étude par les parties intéressées, soit la minorité et le ministère de l'Éducation.

VI. ONTARIO

A. HISTORIQUE

1676 : La première classe de français est ouverte à Kingston.
 1791 : L'*Acte constitutionnel* divise le Canada en Haut et en Bas-Canada. Dans le Haut-Canada, l'enseignement dans les écoles primaires est dispensé en anglais ou en français selon les besoins.

Il peut, de plus, établir des règlements concernant :

- les devoirs et les qualités requises des enseignants;
- les normes sur l'organisation et l'administration des écoles publiques;
- le montant de subventions versées aux écoles;
- les registres que doit tenir une commission scolaire;
- de façon générale, toute question relative à l'enseignement.

Depuis 1974, il existe, au sein du ministère de l'Éducation, un Bureau de l'Éducation française (BEF) comptant plus de 50 employés chargés des fonctions suivantes :

- étudier, élaborer et recommander au ministre des politiques et des priorités concernant tous les aspects de l'éducation française;
- promouvoir, planifier, appliquer et faciliter tous les aspects de l'éducation française pour les clientèles francophone et anglophone;
- assurer une liaison et une coordination avec les autres divisions du ministère;
- intégrer tous les services de base essentiels à l'instauration de l'instruction en français;
- assister le ministre de l'Éducation dans la négociation de tous les programmes d'aide fédérale visant la promotion des langues officielles dans l'enseignement, et en assurer l'administration. (*Rapport annuel 1986-1987*, p. 41)

Il faut noter que le BEF coordonne les activités de tous les programmes de français incluant les programmes d'immersion et les programmes de français langue seconde. Le BEF n'a toutefois pas de pouvoir décisionnel : il coordonne les services du ministère et conseille le ministre.

Deux événements relatifs à la gestion scolaire, témoignant d'un militantisme important de la part de la minorité, ont eu lieu ces dernières années au Manitoba. Tout d'abord, en 1988, un modèle de gestion à trois paliers (provincial, régional et local) a été proposé par le Comité directeur des structures scolaires sous l'égide de six organismes franco-manitobains⁶⁶. Ce modèle, proposé dans le document intitulé *La gestion des écoles : un modèle à suivre* fait l'objet de consultations et de discussions auprès de la communauté francophone. Nous pouvons en conclure que :

les Franco-Manitobains sont particulièrement préoccupés par la gestion de leurs écoles. Les avis, ici, sont partagés, la plupart favorisant la création de divisions scolaires (ou commissions) de langue française, les autres s'opposant à la fondation d'une seule division pour tout le Manitoba, par crainte de voir entamer l'autonomie des divisions locales. (Aquin, 1988, p. 22)

Un deuxième événement, le *Renvoi* en cour d'appel des questions constitutionnelles relatives à l'article 23 de la *Charte*, n'a toutefois pas donné les résultats escomptés. On a notamment

Quant aux écoles franco-mantibaines, elles sont instituées à l'intérieur des commissions scolaires anglophones. Une seule, celle de la rivière Rouge, fonctionne en français et, à toutes fins utiles, est devenue une commission scolaire francophone en quelque sorte par hasard puisque ce sont les commissaires francophones qui y sont élus qui lui donnent une autonomie complète.

Les devoirs et les pouvoirs des commissions scolaires sont vastes. Mentionnons les plus importants :

- fournir des installations convenables;
- préparer un rapport annuel;
- préparer un budget et le rendre public;
- embaucher le personnel enseignant et autre;
- verser les salaires;
- pourvoir à l'achat de manuels scolaires;
- déterminer le nombre, la nature, le niveau et la catégorie des écoles qui doivent être établies et entretenues;
- instituer des cours d'enseignement à la prématernelle, à la maternelle, au primaire et au secondaire;
- instaurer des cours du soir, d'été ou encore des cours spéciaux ainsi que des cours professionnels et techniques;
- conclure une entente avec le gouvernement provincial ou même fédéral (avec l'approbation du ministre), le ministre, un organisme gouvernemental, une commission scolaire ou une autre personne, concernant des élèves ou la prestation de services pédagogiques;
- assurer le transport des élèves;
- prélever des taxes scolaires.

Notons enfin que le système scolaire mantibain est décentralisé. Aussi les commissions scolaires peuvent-elles prendre un grand nombre d'initiatives.

Le ministre de l'Éducation, pour sa part, « est responsable de la surveillance, du contrôle et de l'administration des écoles publiques et des autres écoles établies conformément à la *Loi sur l'administration scolaire* » (1980, p. 1). Il est également responsable du système d'éducation primaire, secondaire et universitaire. Plus précisément, il a les pouvoirs suivants :

- conseiller les commissions scolaires sur tous les aspects des bâtiments et des locaux scolaires;
- approuver les cours et les manuels;
- ordonner la fermeture d'une école;
- établir et administrer les collèges communautaires;
- acheter les manuels et s'entendre avec les commissions scolaires pour la distribution gratuite de ces manuels.

minorité soit utilisée comme langue d'enseignement. Cette disposition protège également les parents anglophones désirant des cours d'immersion ou encore les parents anglophones désirant l'enseignement en anglais si le seul programme disponible est le programme d'immersion.

La cour d'appel, lors de son avis dans le *Renvoi constitutionnel*, a indiqué que ce nombre est incompatible avec l'article 23 de la *Charte*. Le juge Twaddle, pour sa part, trouve ce nombre trop élevé et estime qu'il devrait être flexible. Enfin, la majorité des juges croit que les commissions scolaires locales ne sont pas en mesure de déterminer le « nombre suffisant » pour l'obtention de services d'enseignement. Cette responsabilité revient aux législatures provinciales ou à un organisme indépendant, dont la composition reste à définir.

2. Description du système scolaire

Les droits confessionnels ayant été éliminés en 1890, le territoire du Manitoba est réparti en une unique carte scolaire publique. En 1988, celle-ci représente 47 divisions scolaires regroupant 65 districts. La province est divisée en cinq zones régionales qui sont soumises à l'administration provinciale et à la surveillance de 25 inspecteurs du ministère de l'Éducation.

La *Loi sur les écoles publiques* fait état, au paragraphe 5, d'un mécanisme complexe de révision des territoires scolaires; la minorité francophone pourrait d'ailleurs se prévaloir de ce mécanisme en vue d'effectuer le regroupement géographique permettant l'homogénéité linguistique de la gestion scolaire. La procédure générale pour la révision des territoires scolaires prévoit la création d'une commission de recours faisant suite à la demande d'une des instances suivantes :

- une commission scolaire, un conseil municipal;
- un administrateur résidant d'un district;
- dix électeurs résidents du district;
- dix électeurs résidents d'un territoire non compris dans une division ou un district scolaire;
- le ministre, de sa propre initiative.

La commission de recours peut demander au ministre d'établir une nouvelle division ou un nouveau district scolaire, d'ajouter un territoire à ces derniers, ou de transférer un territoire. Cette commission est composée du nombre de membres déterminé par le lieutenant-gouverneur en conseil et demeure en fonction pour une durée prédéterminée jusqu'à un maximum de deux ans.

Les divisions et les districts scolaires sont gérés par un organisme appelé « commission scolaire », formé d'un conseil de commissaires élus pour une période de deux ans. Le nombre de commissaires (entre 5 et 11) est déterminé par le ministre ou par une commission scolaire répartissant son territoire en quartiers selon la concentration de sa population locale. Cette répartition est également sujette à l'approbation du ministre.

Tableau II-25

Comparaison des effectifs et des écoles publiques, Manitoba, 1986-1987, 1988-1989

Augmentation Décroissance (en %)	1986-1987		1988-1989	
	1986-1987		1988-1989	
Programme « total » (75% ou plus de la journée scolaire) : Effectifs dans les écoles homogènes (1 ^{re} à 12 ^e année)	3 230	3 170	(-1,9)	
Nombre d'écoles	15	14		fusion de deux écoles en une
Effectifs dans les écoles mixtes (1 ^{re} à 12 ^e année)	736	793	7,7	
Nombre d'écoles	6	6	0	
Programme partiel ou de base enrichi : Effectifs dans les écoles (1 ^{re} à 12 ^e année)	1 245	1 278	2,7	
Nombre d'écoles	13	13	0	
Total : Effectifs	5 211	5 241	0,6	
Ecoles	34	33	0	

Source : Ministère de l'Éducation. « Écoles franco-manitobaines », 1986-1987 et 1988-1989.

Les écoles mixtes et homogènes font partie d'un réseau de classes et d'écoles françaises encadré par la Fédération provinciale des comités de parents (FFCP) qui compte 24 comités d'école et 34 comités de prématernelle. Une grande disparité existe dans les services offerts à la minorité :

Jusqu'à un certain point, il y a disparité quant à la qualité et à la quantité des services dispensés dans les écoles franco-manitobaines. L'existence de ces services dépend du nombre des inscriptions dans chacune des écoles ou des divisions scolaires. Par exemple, aucune division scolaire n'offre de programme d'éducation professionnelle en français, et les services d'enseignement exceptionnel en français sont très limités dans certaines divisions scolaires. (Société franco-manitobaine *et al.*, 1988, p. 19).

Par ailleurs, la *Loi sur les écoles publiques* stipule au paragraphe 79(3) les conditions en vertu desquelles des classes pour la minorité doivent être établies. Sur requête des parents, si 23 élèves ou plus peuvent être regroupés dans une classe, la commission scolaire doit accéder à la demande des parents. Cependant, si le nombre est inférieur à 23, le ministre peut demander à la commission scolaire de prendre des mesures pour que la langue de la

Des conditions plus favorables à l'épanouissement de la communauté minoritaire sont créées par les écoles homogènes⁶⁵ dites franco-manitobaines. Ces écoles sont ainsi définies par la politique officielle du ministère de l'Éducation :

Sous réserve de la Loi sur les écoles publiques du Manitoba et de la Charte canadienne des droits et libertés, l'école franco-manitobaine vise le développement d'un bilinguisme fonctionnel chez les élèves en utilisant le français comme langue première d'enseignement pour un minimum de 75 p. 100 de la maternelle à la 12^e année, comme véhicule de la culture canadienne-française et comme langue de communication interne et externe. (*La gestion des écoles*, 1988, p. 22)

Dans les 15 écoles homogènes franco-manitobaines, 3 230 élèves reçoivent leur éducation en français de la 1^{re} à la 12^e année, soit l'équivalent de 48,3 p. 100 des enfants dont la langue maternelle est le français. Cependant, ces effectifs n'englobent que l'équivalent de 18,2 p. 100 de la clientèle scolaire admissible en vertu de l'alinéa 23(1)a) (tableau II-24).

Nous pouvons documenter statistiquement les progrès accomplis en deux ans, soit entre 1986-1987 et 1988-1989, à partir des données du ministère de l'Éducation. Ces données concordent avec les critères définis antérieurement : sont inclus les effectifs de la 1^{re} à la 12^e année dans les écoles des commissions scolaires (tableau II-25). Alors que les effectifs des écoles homogènes ont diminué de 1,9 p. 100 pendant cette période, ceux des écoles mixtes du programme « total » ont augmenté de 7,7 p. 100 (57 élèves). En général, dans tous les programmes, les effectifs ont augmenté de 0,6 p. 100 (30 élèves).

Enfin, pour l'année scolaire 1989-1990, Statistique Canada estime à 5 060 élèves les effectifs de la 1^{re} à la 12^e année dans les écoles offrant des programmes d'enseignement à la minorité francophone, soit une baisse de 3,5 p. 100 par rapport aux effectifs de 1988 et de 2,9 p. 100 par rapport à ceux de 1986.

scolaire sont consacrés à l'enseignement en français. De plus, deux types de regroupements sont effectués dans les écoles manitobaines : 1) écoles homogènes et 2) écoles mixtes regroupant des classes francophones dans des écoles anglaises ou d'immersion; ces dernières sont considérées par la communauté comme des « écoles franco-manitobaines en développement ».

Les statistiques de l'instruction à la minorité concernant les programmes parlés ou complets dans les écoles publiques mixtes et homogènes sont regroupées au tableau II-23. On constate que 5 211 élèves reçoivent l'instruction dans des programmes de la minorité de la 1^{re} à la 12^e année, dans 34 écoles au sein de 14 divisions scolaires. Ces effectifs équivalent à 78 p. 100 des élèves dont le français est la langue maternelle², soit 6 681 enfants. C'est dire qu'il reste encore l'équivalent de 22 p. 100 des jeunes franco-manitobains qui ne reçoivent pas l'instruction dans leur langue maternelle. Ces effectifs recevant l'instruction en français comprennent l'équivalent de 29,4 p. 100 des 17 754 élèves³ admissibles en vertu de l'alinéa 23(1)a)⁴ de la Charte.

Tableau II-23

Écoles publiques dispensant l'instruction à la minorité, Manitoba, 1986

Écoles*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
34	5 211	6 681	78,0	17 754	29,4

Sources :

* Ministère de l'Éducation du Manitoba. Bureau de l'Éducation française. « Écoles franco-manitobaines 1986-1987 ».

** Voir le tableau II-5.

Tableau II-24

Écoles publiques homogènes, Manitoba, 1986

Écoles homogènes*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
15	3 230	6 681	48,3	17 754	18,2

Sources :

* Ministère de l'Éducation du Manitoba. Bureau de l'Éducation française. « Écoles franco-manitobaines 1986-1987 ».

** Voir le tableau II-5.

Avec l'Ontario (5,8 p. 100), l'Île-du-Prince-Édouard (5,1 p. 100) et la Nouvelle-Écosse (4,5 p. 100), le Manitoba appartient au groupe de provinces dont la minorité de langue officielle est importante⁶¹. La population franco-manitobaine est regroupée dans les bassins géographiques suivants : Winnipeg, Saint-Boniface, les rivières Rouge et Seine, Elllice-Saint-Lazare, Lawrence-Sainte-Rose, Powerview-Saint-George et la Montagne.

Tableau II-22

Population totale de langue maternelle française, Manitoba, 1976, 1981, 1986

Population totale		L.M.F.	L.M.F./ population totale (en %)
1976	1 021 505	54 745	5,4
1981	1 026 240	52 560	5,1
1986	1 063 010	51 775 *	4,9
1986	1 063 015	56 585 **	5,3

* Données ajustées par Statistique Canada pour fin de comparaison avec les années antérieures.
** Langue maternelle unique (française) et double (anglaise et française).

Source : Statistique Canada.

Selon l'article 79 (1) de la *Loi sur les écoles publiques* (1980), le français et l'anglais sont les langues d'enseignement de la province :

79(1) Sous réserve de ce qui est autrement prévu dans le présent article, l'anglais et le français, qui sont les deux langues mentionnées dans l'*Acte de l'Amérique du Nord britannique* de 1867, sont les langues d'enseignement dans les écoles publiques.

Le règlement n° 469/88 du 7 novembre 1988 précise le temps alloué à l'instruction de l'anglais qui est obligatoire à compter de la 4^e année :

3. Le temps alloué pour les cours dispensés soit en anglais, soit en français est le même. Cependant, dans les classes où la langue d'enseignement est le français, lorsque l'anglais est une matière obligatoire aux termes du paragraphe 79(6) de la Loi, le temps alloué à l'anglais ne peut excéder 25 p. 100 du temps d'enseignement total.

Cette loi et ce règlement ont pour effet de mettre en place deux sortes de programmes de français langue maternelle : le programme complet allouant 75 p. 100 ou plus de la journée scolaire à l'enseignement en français et le programme partiel où 50 p. 100 de la journée

l'Éducation pour élaborer des politiques, répondre aux besoins pédagogiques et préparer des programmes en français.

1970 : Avec le *projet de loi n° 113*, le français et l'anglais sont déclarés langues d'instruction. Le français devient langue d'instruction jusqu'à concurrence de 100 p. 100 de la journée scolaire, de la maternelle à la 3^e année, et jusqu'à concurrence de 75 p. 100 de la journée scolaire, de la 4^e à la 12^e année.

1971 : Un arrêté-en-conseil du gouvernement oblige l'adhésion des districts élémentaires à un nouveau système de divisions unitaires responsables de l'éducation élémentaire et secondaire. Dans certaines situations, les francophones perdent le contrôle de leurs écoles ou doivent souvent le partager avec une minorité anglophone.

1974 : Le Bureau de l'éducation française (BEF) est fondé pour fournir un appui aux commissions scolaires qui en font la demande.

1980 : Lors de la refonte de la *Loi sur les écoles publiques*, la province réitère le choix à l'instruction en français mais ne garantit pas l'homogénéité des écoles ni la gestion des écoles par les francophones. Si les parents de 23 élèves au primaire ou au secondaire le demandent, une commission scolaire est tenue d'offrir l'instruction en français à la minorité francophone.

1984 : L'école franco-manitobaine et sa mission particulière sont reconnues dans une politique sur les programmes d'enseignement du BEF.

1988 : La proposition d'un modèle de gestion, *La gestion des écoles : un modèle à suivre* est rendue publique par le Comité *ad hoc* de planification de la gestion scolaire au Manitoba.

1990 : La cour d'appel rend son avis consultatif concernant l'interprétation de l'article 23 dans le *Renvoi constitutionnel*. Les cinq juges concluent que cet article n'accorde pas de droit à la gestion scolaire. Toutefois, la majorité estime que le système en vigueur ne permet pas de respecter les droits conférés par l'article 23.

B. LE CONTEXTE ACTUEL

1. Statistiques

En 1986, le nombre de personnes dont la langue maternelle est le français⁹ s'élève à 51 775, soit 4,9 p. 100 de la population totale de la province (tableau II-22). Ce pourcentage, qui a diminué de 0,2 point (785 personnes) depuis 1981, avait diminué de 0,5 point en dix ans (1976-1986), soit 2 970 personnes. La population totale de la province a, pour sa part, augmenté de 41 505 personnes (4,1 p. 100) de 1976 à 1986.

Cependant, en compilant les choix de langue maternelle double (français et anglais) avec ceux de langue maternelle unique (français), nous constatons que cette population s'élève à 56 585 personnes¹⁰, soit 5,3 p. 100 de la population provinciale en 1986. Ces chiffres reflètent mieux la communauté visée par l'article 23 qui n'exige pas que la langue maternelle déclarée soit unique.

Enfin, les Fransaskois tiennent en très grande majorité le même discours, souvent avec éloquence. La conjoncture « post-jugement *Mercur* » semble avoir resserré les rangs de la population et accentué un militantisme qui reconnaît l'importance et l'urgence d'une résolution immédiate de la situation scolaire.

V. MANITOBA A. HISTORIQUE

- 1818 : La première école française ouvre ses portes à Saint-Boniface. Les écoles françaises et anglaises sont ensuite fondées par les églises catholique et protestante.
- 1870 : Le Manitoba devient province canadienne. L'*Acte du Manitoba* garantit les droits des minorités religieuses à leurs écoles et à la gestion de ces écoles.
- 1871 : La première loi scolaire établit un bureau d'éducation divisé en sections catholique et protestante. Les districts scolaires sont également divisés selon les deux systèmes confessionnels qui se partagent le territoire.
- 1881 : La loi permet aux catholiques et aux protestants de partager le même territoire.
- 1890 : Avec le *Public Schools Act*, le gouvernement manitobain élimine le système scolaire séparé (catholique ou protestant) et consacre ainsi l'unilinguisme. Les francophones catholiques perdent la gestion de leurs écoles autonomes qui deviennent propriété de l'État. L'instruction en français de même que l'enseignement du français et de la religion sont interdits.
- 1896 : La création d'écoles bilingues est permise si dix élèves d'une école ont comme langue maternelle le français ou une langue autre que l'anglais. L'instruction se fait alors en français ou dans une autre langue et en anglais. L'enseignement de la religion est laissé à la discrétion des autorités locales.
- 1916 : Le gouvernement abolit la loi permettant l'instruction bilingue. Une résistançe ouverte s'organise. On continue d'enseigner en français.
- 1952 : Le *Public Schools Act* stipule que l'anglais est la langue d'instruction, mais qu'une langue autre que l'anglais peut être utilisée pour les cours de religion et les cours de langue donnés avant ou après l'horaire régulier de la journée scolaire.
- 1955 : Le cours de français langue maternelle est autorisé de la 4^e à la 12^e année.
- 1958 : La création de divisions scolaires secondaires permet de regrouper la majorité de la population francophone dans cinq divisions scolaires. Les districts scolaires élémentaires restent inchangés.
- 1963 : Le cours de français langue maternelle est autorisé de la 1^{re} à la 12^e année.
- 1967 : La loi scolaire est amendée de façon à permettre, à la seule discrétion du ministre, l'instruction en français à raison d'un maximum de 50 p. 100 de la journée scolaire. Une section française est mise sur pied au ministère de

C. RÉSUMÉ

Nous avons souligné les difficultés qu'a toujours connues la minorité de langue officielle en regard à la reconnaissance du droit à l'instruction en français. Tout d'abord, nous avons indiqué les interdictions qui ont touché, en 1918 et en 1931, l'enseignement en français. De plus, les programmes de la minorité ont été amalgamés, en bonne partie, aux programmes d'immersion. La reconnaissance officielle par le ministère de l'Éducation des particularités de chacun de ces programmes n'est survenue qu'en 1979. Enfin, la *Loi linguistique de la Saskatchewan* (1988) a porté un dur coup à la minorité puisque, à toutes fins pratiques, cette loi consacrait l'unilinguisme dans cette province. Toutefois, grâce à une entente fédérale-provinciale, une nouvelle ère s'annonce pour la reconnaissance des droits de la minorité. En effet, l'instauration de commissions scolaires transaskoises fournit à la minorité un moyen concret d'assurer son épanouissement.

Au chapitre de l'enseignement dans la langue de la minorité, nous avons noté qu'en 1986 les effectifs dans les écoles dispensant des programmes d'instruction à la minorité constituaient l'équivalent de 7,8 p. 100 des enfants d'âge scolaire admissibles en vertu de l'alinéa 23(1a). Cette clientèle a été établie à 10 722 enfants, âgés de 6 à 17 ans. Par ailleurs, l'équivalent de 1,6 p. 100 d'entre eux étudie dans des écoles homogènes, soit 166 enfants. L'écart énorme entre la clientèle admissible et les effectifs dans les écoles de la minorité demande qu'une recherche approfondie à cet égard soit effectuée. Cependant, le fait que seules trois écoles homogènes soient disponibles dans toute la province, montre que l'accès à des services de qualité dans la langue de la minorité ne permet pas aux parents de faire des choix équitables en ce qui touche l'instruction de leurs enfants.

Quant à la gestion scolaire, les parents de la minorité étaient invités à se prévaloir des mécanismes mis en place pour la majorité : les comités consultatifs. Par ailleurs, le modèle contractuel de gestion scolaire de la St. Paul Roman Catholic Division #20 (1982) a été élaboré pour déléguer des responsabilités aux parents d'une école homogène de Saskatoon. La Commission des écoles transaskoises a également présenté, en 1984, un projet de commission scolaire provinciale. Enfin, le comité de travail pour la gestion des écoles transaskoises a établi un modèle de gestion pour la minorité, de concert avec le gouvernement provincial et les organismes intéressés du secteur de l'éducation sous la présidence d'un représentant du gouvernement fédéral. Ce mécanisme présente sous un jour nouveau la reconnaissance et le respect des droits conférés par l'article 23 de la *Charte* en mettant sur pied un nouveau système de commissions scolaires transaskoises.

En règle générale, d'après une étude de Dubé (1988), les Fransaskois sont très peu satisfaits de leur situation scolaire. Le problème majeur tient surtout à l'encadrement actuel des écoles par des commissions scolaires anglophones que réglera toutefois le nouveau système de gestion par des commissions scolaires transaskoises. Néanmoins, beaucoup d'élèves fréquentent encore les écoles d'immersion (type B) ou des écoles mixtes. De plus, les écoles transaskoises souffrent d'une pénurie de ressources humaines et matérielles.

Les parents Transaskois empruntaient donc ces mécanismes consultatifs pour affirmer leur pouvoir d'influence.

Une variante de ce modèle consultatif a été établie à Saskatoon où les parents, réunis en société sans but lucratif, ont conclu une entente contractuelle. En effet, en 1982, le Conseil de l'école canadienne-française de Saskatoon Inc. signe un contrat avec le St. Paul Roman Catholic Division #20 dans l'espoir que ce modèle leur fournirait un mécanisme de gestion de leur école. Une analyse historique nous permet de conclure que ce modèle n'a pas encore accordé aux parents le pouvoir de gestion escompté⁵⁷.

En général, un modèle de gestion scolaire pour les francophones de la Saskatchewan doit regrouper la minorité afin de lui fournir un réseau de soutien tout en permettant l'autonomie locale de groupes dispersés. Ainsi, un projet d'une commission scolaire Transaskoise a été élaboré en 1984 par la Commission des écoles Transaskoises⁵⁸. Dans le document présentant le projet au ministre de l'Éducation, la Commission se prononce en ces termes :

Il faut donc une structure centrale capable de donner les services que les communautés locales ne sont pas en mesure de se permettre parce qu'il y a trop peu d'étudiants. Il faut aussi que les communautés soient suffisamment autonomes pour prendre les décisions qu'une autorité centrale n'est pas en mesure de faire adéquatement parce qu'elle est trop éloignée. (p. 28-29)

Par suite du jugement de la Cour suprême du Canada dans l'affaire *Mercurie* reconnaissant le bilinguisme historiquement légal de la province et afin de remédier au manque de gestion scolaire pour la minorité de langue officielle, les gouvernements fédéral et provincial se sont entendus en 1988 pour verser des sommes destinées à l'élaboration d'une structure de gestion scolaire pour la minorité de langue officielle. Cette entente a donné lieu à un mécanisme permettant aux représentants des groupes suivants d'élaborer ensemble une structure de gestion scolaire pour la minorité sous la direction d'un président impartial du gouvernement du Canada :

- cinq représentants des associations Transaskoises;
- cinq représentants du gouvernement provincial;
- cinq représentants des conseils scolaires;
- cinq représentants de professionnels en éducation.

Le Comité de coordination pour le contrôle et la gestion des écoles francophones par les francophones ainsi établi a déposé en juin 1989 son rapport, intitulé *Une composante du système scolaire de la Saskatchewan au service des Transaskois*. Ce comité y recommande la formation de commissions scolaires Transaskoises locales assorties d'un Conseil général provincial. Ce modèle de gestion, dont les structures touchent autant le pouvoir décisionnel de la minorité au palier local qu'au palier provincial et la structure au sein du ministère de l'Éducation, a été accepté par le ministre de l'Éducation qui en a avalisé l'instauration.

donnera l'instruction en français et en établir la catégorie : type A ou type B. Le ministre de l'Éducation, avec l'accord du lieutenant-gouverneur en conseil, peut établir des règlements touchant :

- le classement, l'organisation, la direction, la division en classes;
- les examens, la surveillance et l'inspection de toutes les écoles financées par les deniers publics;
- la construction, l'équipement et l'entretien des bâtiments scolaires;
- les nominations, les conditions d'habilitation, les fonctions des agents scolaires;
- l'approbation des manuels;
- l'élaboration des programmes.

Le Bureau de la minorité de langue officielle (BMLO), instauré en 1980, remplit les fonctions suivantes :

- élaborer les politiques;
- élaborer les programmes et recommander le matériel pédagogique;
- aider au recrutement et à la formation d'enseignants compétents;
- promouvoir l'instruction en français dans la province.

Il faut cependant noter que l'instruction en français comprend les programmes d'immersion autant que l'enseignement à la minorité transsaskoise. En 1986-1987, selon le BMLO, les effectifs en immersion se chiffrent à 7 873 élèves, de la maternelle à la 12^e année, dans 56 écoles, effectifs sept fois supérieurs à ceux la minorité de langue officielle. Toujours selon les mêmes sources, en 1988-1989, ces effectifs se chiffrent à 8 940 élèves dans 61 écoles.

La minorité francophone a historiquement eu droit de regard sur ses écoles par l'intermédiaire de comités d'écoles ou de « comités avisés ». Ces comités existent également pour la majorité. Trois sections de l'article 180 de la *Loi sur l'éducation* énoncent clairement ce principe, non seulement pour la minorité mais également pour toute école désignée, de type A ou B :

- 32.11(1) *In the school division where no board of trustees exists, the parents and guardians of the pupils enrolled or proposed to be enrolled in a designated program shall form a parents' council.*
- 32.11(2) *The parents' council shall act in an advisory capacity to the board of education.*
- 32.5 *The parents or guardian of any pupil attending a designated school is eligible to serve on any local school advisory committee that may be formed with respect to that designated school.*

Enfin, pour l'année scolaire 1989-1990, Statistique Canada estime à 1 010 élèves les effectifs de la 1^{re} à la 12^e année dans les écoles offrant des programmes d'enseignement à la minorité francophone, soit une augmentation de 1,7 p. 100 par rapport aux effectifs de 1988 et de 20,1 p. 100 par rapport à ceux de 1986.

2. Description du système scolaire

Tout comme en Alberta, la *Loi sur l'éducation* de la Saskatchewan prévoit l'établissement d'écoles séparées pour la minorité d'un district scolaire, qu'elles soient catholiques ou protestantes. Si les contribuables minoritaires votent en faveur d'un district scolaire séparé, ils sont tenus de contribuer à son financement, selon le taux d'imposition fixé par le conseil du district. Le partage des valeurs imposables des sociétés s'effectue en fonction de la religion des actionnaires. Ainsi, le système séparé se trouve subventionné selon les mêmes droits que le système public. La province est divisée en deux cartes scolaires regroupant les commissions scolaires publiques, d'une part, et les commissions séparées, d'autre part. Le système scolaire, public et séparé, est réparti entre cinq types d'administration locale ou régionale de ses écoles :

1. un « Board of Education » ou conseil de commissaires d'une division scolaire regroupant des petits districts ruraux; les conseils sont composés de cinq à huit membres élus pour trois ans lors des élections des commissions scolaires locales ;
2. un conseil de commissaires de petit district dite « commission scolaire locale » lorsque le district fait partie d'une division scolaire; ce conseil garde une fonction consultative comme l'indique d'ailleurs son nom anglais : « *local advisory board* »;
3. un district scolaire indépendant composé de trois syndicats élus;
4. un district scolaire urbain;
5. un comité de parents pour une école remplace la commission scolaire locale lorsque le district ne fait pas partie d'une division scolaire (le « *local advisory board* » n'existe pas alors).

Il existe actuellement dans cette province 110 divisions scolaires, dont 87 publiques administrant 770 écoles et 23 divisions séparées catholiques administrant 121 écoles. Chaque division comprend plusieurs districts scolaires pour un total de 765 pour la province.

L'article 180 de la *Loi sur l'éducation* indique que l'instruction en français, ou dans une langue autre que l'anglais, dépend de la volonté du conseil scolaire de district ou de division. Le ministre de l'Éducation peut ensuite, à la demande du conseil, désigner une école où se

Tableau II-20

Écoles publiques homogènes, Saskatchewan, 1986

Écoles homogènes*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
3	166	1 762	9,4	10 722	1,6

Sources :

- * Ministère de l'Éducation de la Saskatchewan, Bureau de la minorité de langue officielle. « Écoles désignées, Inscriptions 1986-1987 ».
- ** Voir le tableau II-5.

Il faut en conclure que la minorité francophone de la Saskatchewan a, dans de telles conditions, peu de chances de s'épanouir et que des mesures efficaces s'imposent pour réinsérer au sein de la collectivité francophone les enfants admissibles en vertu de l'article 23. Il importe donc de prendre conscience qu'en 1986, l'équivalent d'un enfant sur cinq admissibles en vertu de l'alinéa 23(1)a), soit l'équivalent de 16,4 p. 100, apprend la langue maternelle d'un ou des parents.

Des progrès ont toutefois été réalisés. Le tableau II-21 compare les effectifs entre 1986-1987 et 1988-1989. Nous notons que les inscriptions aux programmes de la minorité ont augmenté de 18,5 p. 100 (155 élèves) en deux ans. Ce sont cependant les écoles homogènes qui enregistrent les plus grands progrès : 60,2 p. 100 ou 100 élèves.

Tableau II-21

Comparaison des effectifs et des écoles publiques, Saskatchewan, 1986-1987, 1988-1989

1986-1987		1988-1989		Augmentation (en %)	
12	838	12	993	0	18,5
Total des écoles publiques dispensant l'enseignement					
3	166	3	266	0	60,2
Écoles homogènes					
4	312	4	355	0	13,8
Écoles mixtes à double voie					
5	360	5	372	0	3,3
Écoles francophones non-homogènes					
Effectifs (1 ^{re} à 12 ^e année)					
Collège Mathieu (école privée)					
116		133			14,7

Source : Ministère de l'Éducation de la Saskatchewan, Bureau de la minorité de langue officielle. « Écoles désignées, Inscriptions », 1986-1987 et 1988-1989.

Enfin, notons que les Fransaskois peuvent être regroupés dans des écoles de type B, surtout au secondaire. Il se peut, par exemple, qu'une même école soit désignée de type A au primaire et de type B après la 7^e année. C'est le cas de écoles de Bellegarde et de Zenon Park.

Selon les données du Bureau de la minorité de langue officielle (BMLO) du ministère de l'Éducation pour 1986, l'instruction dans la langue de la minorité est offerte dans neuf écoles « désignées de type A » (homogènes et non homogènes) et dans quatre écoles à « double voie » fournissant des classes à l'intérieur d'écoles anglaises ou d'immersion, soit un total de 12 écoles touchant 838 élèves de la 1^{re} à la 12^e année (tableau II-19). Nous excluons de ces statistiques les programmes de la maternelle (moins de 6 ans) et ceux d'une école privée, non « publique », soit le collège Mathieu de Gravelbourg. Ces effectifs constituent l'équivalent de 47,6 p. 100 de la population d'âge scolaire (de 6 à 17 ans) de langue maternelle française⁵³ et complètent l'équivalent de 7,8 p. 100 de la clientèle scolaire admissible en vertu de l'alinéa 23(1)a)⁵⁴, clientèle qui se chiffre à 10 722 enfants⁵⁵.

En 1986, une seule école homogène⁵⁶ offre l'instruction au secondaire; il s'agit d'un collège privé, le collège Mathieu de Gravelbourg. Nous n'incluons pas ses effectifs dans les données des tableaux II-19 et II-20 puisque que les programmes ne sont pas entièrement financés par les fonds publics. Les subventions accordées aux écoles privées représentant 50 p. 100 des fonds alloués aux écoles publiques, ce type de financement ne correspond pas complètement à celui stipulé par l'article 23 (« à même les fonds publics »). Cependant, trois écoles françaises élémentaires (1^{re} à 9^e année) homogènes de type A desservent une population francophone de 166 élèves, soit l'équivalent de 9,4 p. 100 de la population des enfants d'âge scolaire de langue maternelle française (tableau II-20). Ce sont les écoles Migr de Laval de Regina, Valois de Prince-Albert et l'école canadienne-française de Saskatoon. Fait plus frappant encore, toujours en 1986, la population dans les écoles homogènes représente l'équivalent de 1,6 p. 100 de la clientèle scolaire admissible en vertu de l'alinéa 23(1)a).

Tableau II-19

Écoles publiques dispensant l'instruction à la minorité, Saskatchewan, 1986

Écoles*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle** admissible	Effectifs C.A.** (en %)
12	838	1 762	47,6	10 722	7,8

Sources :
* Ministère de l'Éducation de la Saskatchewan, Bureau de la minorité de langue officielle. « Écoles désignées, Inscriptions 1986-1987 ».
** Voir le tableau II-5.

en 1913, avant la Première Guerre mondiale, et de 1928 à 1930 (Munroe, 1974). En raison de ces immigrations successives, le poids démographique des francophones en Saskatchewan se trouve aujourd'hui réduit sur le plan politique : les francophones se retrouvent en cinquième position parmi les minorités ethniques. Cette situation démographique crée un climat où la reconnaissance de la langue officielle entre en compétition avec celle des autres groupes minoritaires.

Dès 1901, la loi scolaire de la Saskatchewan plaçait le français sur un pied d'égalité avec les autres langues et en permettait l'enseignement après les heures de classes, c'est-à-dire après 15 h. En 1918, toutefois, l'enseignement en 1^{re} année dans toutes les langues autres que l'anglais et le français est aboli. Ce n'est qu'en 1973 que les groupes ethniques peuvent enseigner dans leur langue, alors que le français avait été autorisé quelques années auparavant, soit en 1967. Les gains des francophones, malgré leur statut de minorité de langue officielle, influent donc sur les progrès acquis par les groupes ethniques de la Saskatchewan.

Depuis 1979, la Saskatchewan a adopté un système d'écoles dites « désignées » pour l'enseignement en français et dans les langues autres que l'anglais, s'il y a lieu. Telles que décrites dans le Règlement n° 118/79, les écoles désignées de type A devraient desservir la population francophone minoritaire, bien que le règlement n'apporte aucune précision explicite à cet égard. Les écoles désignées de type B sont des écoles d'immersion ou des écoles bilingues. Dans les premières, tous les cours sont donnés en français à l'exception du cours d'anglais. Dans les secondes, les cours sont donnés en français pour une période de temps qui varie de 50 à 80 p. 100 de la journée scolaire. Les écoles de type A étant celles qui nous intéressent particulièrement, nous en résumons les principales caractéristiques.

Une école peut être désignée de type A par suite de la demande d'une commission scolaire et de la recommandation du ministre de l'Éducation au lieutenant-gouverneur en conseil. Certaines conditions doivent être remplies : un minimum de 15 élèves par groupe, l'assurance d'un minimum de trois années de fonctionnement, l'instruction en anglais ou le transport vers une autre école pour les élèves non-inscrits au programme désigné.

Les écoles désignées de type A ne sont pas nécessairement des écoles homogènes. Comme aucun critère d'admission n'est établi en fonction de l'article 23 de la *Charte*, elles peuvent également être des écoles non homogènes (les effectifs anglophones moindres sont mêlés aux francophones) ou des écoles à « double voie » (mixtes ou partagées). Dans ces dernières, des programmes de la minorité de langue officielle cohabitent avec des programmes anglophones, pourvu que leur administration soit distincte. Les quatre écoles mixtes à double voie sont celles de Gravelbourg, de Ponteix, de Willow Bunch et de Debden. Quant aux écoles non homogènes, elles desservent surtout des collectivités francophones mais comptent des effectifs d'origine anglophone de l'ordre de 5 à 10 p. 100. Ce sont les écoles de Bellegarde, de Ferland, de Vonda, de Zenon Park et de Bellevue.

B. LE CONTEXTE ACTUEL

1. Statistiques

Selon le recensement de 1986⁵⁰, la proportion de la population de la Saskatchewan dont la langue maternelle est le français s'élève à 2,3 p. 100, soit 23 720 personnes; elle a diminué de 0,6 point depuis 1976 et de 0,3 point depuis 1981 (tableau II-18). Par contre, la population totale de la province continue d'augmenter, soit de 9,6 p. 100 depuis 1976 et de 4,3 p. 100 depuis 1981.

Cependant, en compilant les choix de double langue maternelle (française et anglaise) avec ceux de langue maternelle unique (française), la population de la minorité de langue officielle de la Saskatchewan s'élève à 25 900 personnes⁵¹, soit 2,6 p. 100 de la population provinciale. Ce chiffre reflète mieux la clientèle visée par l'article 23 de la *Charte canadienne des droits et libertés* puisque cet article ne spécifie pas que la langue maternelle doit être unique.

La Saskatchewan appartient au groupe de provinces et de territoires dont la population de la minorité de langue officielle est d'importance intermédiaire⁵² comme c'est le cas des Territoires du Nord-Ouest et du Yukon (3 p. 100), de l'Alberta (2,6 p. 100) et de la Colombie-Britannique (1,8 p. 100). La population fransaskoise est dispersée sur le vaste territoire de la province. Les bassins francophones se trouvent surtout dans les régions suivantes : Battleford, Prud'homme-Vonda, Prince-Albert, Gravelbourg-Willow Bunch, Redvers, Zenon Park et Regina (Cartwright, 1980).

Tableau II-18

Population totale de langue maternelle française, Saskatchewan, 1976, 1981, 1986

Population totale		L.M.F.	L.M.F./ population totale (en %)	
1976	921 320	26 705	2,9	
1981	968 310	25 535	2,6	
1986	1 009 625	23 720 *	2,3	
1986	1 009 625	25 900 **	2,6	

* Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
** Langue maternelle unique (française) et double (anglaise et française).

Source : Statistique Canada.

Comme en Alberta, la population francophone en Saskatchewan, implantée grâce à l'immigration des coureurs des bois et des missionnaires français pendant la période pré-confédérative, a été graduellement estompée par les vagues d'immigration venues en majorité d'Europe, des États-Unis et de l'est du Canada. Ces vagues d'immigration survinrent surtout

- 1918 : L'anglais devient la seule langue d'instruction obligatoire. Une seule exception : le français peut être la langue d'instruction en 1^{re} année pour les francophones. L'enseignement dans la langue des autres minorités est supprimé.
- 1931 : Le français est aboli comme langue d'instruction en 1^{re} année. L'enseignement de la lecture, de la grammaire et de la composition françaises peut être autorisé par une commission scolaire jusqu'à un maximum d'une heure par jour.
- 1944 : Par le *Larger School Units Act*, le gouvernement procède à la fusion des 2 331 districts scolaires en 29 grandes unités. Les francophones perdent leur autonomie relative et la gestion de fait de leurs écoles qui leur étaient préservées dans les petits districts scolaires.
- 1966 : Le ministre de l'Éducation embauche pour la première fois une personne responsable des programmes français.
- 1967 : Un amendement à la loi scolaire permet l'instruction en français jusqu'à concurrence d'une heure par jour.
- 1968 : Un amendement permet au lieutenant-gouverneur de désigner des écoles dans lesquelles le français peut être la langue d'instruction pour une période de temps déterminée à sa discrétion.
- 1973 : La loi est modifiée pour permettre l'instruction dans la langue des groupes minoritaires autres que le groupe d'expression française.
- 1980 : Le ministre de l'Éducation met sur pied le Bureau de la minorité de langue officielle (BMLO).
- 1982 : La signature d'un contrat entre le Conseil de l'école canadienne-française de Saskatoon et le « Board of Education of the St. Paul Roman Catholic Division #20 of Saskatoon » délègue des responsabilités au comité de parents.
- 1984 : Le « Projet : Commission scolaire francasaskoise » est présenté au ministre de l'Éducation par la Commission des écoles francasaskoises.
- 1988 : Jugement de la cour du banc de la reine dans la cause de la *Commission des écoles francasaskoises inc., et al c. le gouvernement de la Saskatchewan*. Les francophones ont le droit de gérer et de contrôler les établissements de la minorité lorsque l'instruction est donnée dans des écoles autonomes.
- 1988 : La Cour suprême du Canada confirme, dans l'affaire *Mercurie*, que le français et l'anglais sont les langues officielles de la Saskatchewan et de l'Alberta.
- 1988 : La *Loi linguistique de la Saskatchewan* fait de l'anglais la langue des tribunaux et de l'assemblée législative. Le français est permis dans certaines circonstances.
- 1988 : Le gouvernement fédéral et celui de la Saskatchewan concluent une entente sur la promotion des langues officielles. L'entente vise la traduction de lois, l'offre de services linguistiques aux francophones et la mise en œuvre de mesures visant la gestion par les Francasaskois de leurs établissements scolaires.
- 1989 : À la suite du rapport du Comité de coordination pour le contrôle et la gestion des écoles francophones par les francophones, le gouvernement de la Saskatchewan s'engage à implanter des commissions scolaires francasaskoises assorties d'un Conseil général provincial.

partent français (88,3 p. 100), signe de l'importance accordée à la survie jusqu'à la troisième génération. Cette question devient alors très pertinente : pourquoi les effectifs scolaires dans les programmes de la minorité sont-ils si minces ?

Quant à la gestion scolaire, elle fait l'objet de revendications judiciaires dans la cause *Mahe et al.* afin de faire reconnaître le droit à l'établissement de commissions scolaires. Pour sa part, le gouvernement de l'Alberta estime que le mécanisme des comités consultatifs est un modèle adéquat pour assurer à la minorité le respect de son droit à la gestion scolaire. En outre, un modèle de gestion contractuel présenté par l'« Edmonton Catholic School Board » a fait l'objet d'un refus par la collectivité francophone.

La francophonie albertaine est en mutation. Comme ailleurs au Canada, les francophones se rangent de plus en plus sous la bannière de la langue. Alors que la religion catholique leur avait permis de conserver leur langue depuis l'établissement des premières écoles, ils voient dans l'avènement de la *Charte canadienne des droits et libertés* le début d'un temps nouveau. En effet, à Edmonton, « alors que 40,5 p. 100 disent que les écoles françaises doivent être catholiques, 50,3 p. 100 disent que non et 9,2 p. 100 sont sans opinion » (Martel, 1988, p. 33).

IV. SASKATCHEWAN A. HISTORIQUE

- 1850 : Les premières écoles françaises et anglaises sont en majorité établies sous les auspices des églises catholique et protestante.
- 1875 : L'*Acte des Territoires du Nord-Ouest* reconnaît le droit de former des écoles séparées (dissidentes).
- 1880 : La *Loi sur les Territoires du Nord-Ouest* garantit les droits des minorités religieuses, catholique ou protestante, à des écoles séparées financées à même les fonds publics.
- 1884 : Une ordonnance accorde aux syndicats d'un district séparé les mêmes droits et devoirs qu'à ceux d'un district public.
- 1892 : L'instruction en anglais devient obligatoire pour les matières suivantes au primaire : lecture, écriture, orthographe, arithmétique, géographie, grammaire, histoire de l'Angleterre et du Canada, littérature anglaise et même littérature française.
- 1896 : Le ministre de l'Éducation autorise (« permet ») l'enseignement du français aux francophones. Cet enseignement est toutefois limité à une heure par jour.
- 1901 : L'enseignement de toute langue autre que l'anglais est permis mais en dehors de l'horaire régulier, soit après 15 h.
- 1905 : La Saskatchewan devient province canadienne. La loi entérine les droits des minorités religieuses en permettant à leurs contribuables la formation de districts séparés.

rôle du ministère de l'Éducation : fournir des conseils afin de déterminer le « nombre suffisant », assurer l'élaboration des programmes, offrir un appui financier approprié, résoudre les disputes entre les commissions scolaires et la minorité, et faire preuve de leadership dans ce domaine.

Enfin, une revendication judiciaire visant à faire valoir les droits des francophones vient étayer le dossier scolaire et les interprétations de l'article 23 de la *Charte* viennent consolider les revendications politiques et communautaires. En effet, les litiges qui opposent l'Association Georges-et-Julia-Bugnet et des parents au gouvernement albertain dans l'affaire *Mahe et al.* tentent de faire reconnaître les droits des francophones à la gestion scolaire complète et ce, par une structure parallèle à celle de la majorité. Un jugement de première instance a été rendu le 25 juillet 1985. Un arrêt de la cour d'appel a reconnu le droit de la minorité à la gestion complète en 1987. La Cour suprême du Canada a entendu cette cause en appel le 14 juin 1989.

C. RÉSUMÉ

L'Alberta, avec toutes ses particularités, ressemble tout de même à sa voisine des provinces des Prairies, la Saskatchewan. La reconnaissance des droits de l'article 23 de la *Charte* vient d'y être amorcée, et la distinction entre les programmes d'immersion et l'instruction de la minorité est encore récente (1984). Historiquement, l'autorisation de l'enseignement en français a été le fer de lance de l'enseignement dans la langue d'autres groupes minoritaires. Encore aujourd'hui, il est difficile, dans cette province, d'établir une distinction entre l'une des communautés de langue officielle du Canada et celles des autres groupes ethniques, le poids démographique de la minorité française étant inférieur à celui des groupes ukrainien et allemand. Les tribunaux sont donc appelés à jouer un rôle historique dans la reconnaissance des droits constitutionnels à l'instruction de la minorité de langue officielle française.

Au chapitre de l'instruction, nous avons noté qu'en 1986 l'équivalent de 7,5 p. 100 de la clientèle admissible en vertu de l'alinéa 23(1a) de la *Charte canadienne des droits et libertés* étudié dans des programmes dispensant l'enseignement à la minorité. Cette clientèle se chiffre à 21 093 enfants de 6 à 17 ans. En outre, deux écoles homogènes fournissaient alors l'enseignement à l'équivalent de 2,5 p. 100 de la clientèle admissible en vertu de l'alinéa 23(1a). Des progrès ont pourtant été réalisés entre 1986-1987 et 1988-1989 : augmentation de 79,3 p. 100 des effectifs dans les écoles homogènes (417 enfants) de la 1^{re} à la 10^e année et augmentation de 21,4 p. 100 des effectifs dans les programmes de la minorité.

Étant donné la conviction des membres de la minorité de l'importance de leur survie, dont une autre étude fait état, il est nécessaire de déterminer les causes précises de l'énorme écart qui sépare les effectifs scolaires dans les programmes de la minorité de la clientèle admissible. En effet, nous avons indiqué ailleurs que 92 p. 100 des répondants de la clientèle interviewés croient qu'il est important que les enfants de parents francophones continuent à parler français (Martel, 1988, p. 27). Ils aimeraient également que leurs petits-enfants

2. The atmosphere in the school encourages community involvement and parental participation. (p. 9)

regroupant plusieurs districts. Les membres du conseil sont élus et le nombre en est déterminé par le ministre. Ce conseil est chargé des responsabilités décrites plus haut. Lorsqu'un district n'est pas inclus dans une division, il agit comme conseil de division.

Par le passé, lorsqu'un district était incorporé au sein d'une division, un deuxième palier, ayant droit de regard sur la gestion, était créé pour chaque district. Les membres de ce comité consultatif local, appelé « *Local Advisory Board* », étaient élus dans les mêmes conditions que ceux d'un conseil de division ou de district. Les pouvoirs de ce comité étaient limités mais directement reliés à l'enseignement en français. Le *School Act* (1980) les définissait comme suit :

27(1)(a) *to request the board of a division to institute religious instruction or instruction in the French language in accordance with this Act;*

(b) *to nominate a teacher;*

(c) *to advise the board of the division and carry out those functions that may be delegated to it by the board of the division.*

(2) *If a local advisory board passes a resolution requesting that a board of a division institute instruction in the French language in a school in the district for which the local advisory board was established and sends the resolution to the board of the division, the board of the division shall institute instruction in the French language as soon as it is practical to do so. (p. 13)*

Ce droit de regard sur la gestion n'était, en réalité, qu'un pouvoir d'influence, le pouvoir de décision relevant toujours du conseil de la division scolaire. Vestige de la consolidation des districts scolaires de 1937, ce comité tentait de veiller sur l'enseignement de la religion et du français.

La nouvelle *Loi sur l'Éducation* de 1988 remplace ces comités consultatifs par des comités d'école partout dans la province; leur création demeure sujette à la décision des parents, de l'école et du conseil scolaire (article 17). Toutefois, une commission peut, à la discrétion de ces comités, déléguer des pouvoirs au comité d'école. D'ailleurs, le ministère de l'Éducation encourage les francophones à utiliser le mécanisme des comités locaux pour l'Éducation, *Monitoring and Evaluating Official and Other Language Programs*, la suggestion suivante sous la rubrique « *Community Involvement* » :

1. *The School Board and schools have organized advisory and/or administrative mechanisms to obtain input from the francophone community.*

Les pouvoirs du ministre sont vastes et la « Language Services Branch », créée en 1978, est chargée de dispenser les services concernant les langues dites secondes : français (immersion et minoritaire), ukrainien, allemand, espagnol, italien, etc. Plus précisément, la « Language Services Branch » doit veiller à la mise en œuvre des programmes de français, faciliter l'accès aux services, planifier, élaborer et diffuser les programmes (Conseil des ministres de l'Éducation, 1983). Le territoire de la province est divisé par le ministère de l'Éducation en six zones ou régions desservies par des bureaux régionaux du ministère. Des experts-conseils francophones sont disponibles dans quatre de ces régions, soit à Calgary, à Edmonton, à Grande Prairie et à Red Deer.

Cependant, la pierre angulaire de l'administration scolaire albertaine est la commission scolaire. C'est à son conseil que le ministre délègue des responsabilités administratives obligatoires telles que :

- établir la politique et les règlements concernant l'administration, la gestion, la prestation des services éducatifs et des programmes scolaires, et en faire connaître le contenu à ses employés;
- maintenir des polices d'assurances;
- nommer un surintendant, sous réserve de l'approbation du ministre;
- entretenir, réparer, fournir et garder en bon état les propriétés et les biens;
- tenir une réunion annuelle;
- établir des ententes avec d'autres districts scolaires et (ou) des municipalités en vue de promouvoir les services récréatifs, communautaires et éducatifs.

Les commissions scolaires peuvent également se prévaloir des pouvoirs suivants : élaborer et offrir des cours, des programmes et du matériel didactique dans ses écoles, et permettre la création de comités d'écoles. Elles peuvent enfin déléguer à des comités ou à des employés tous les pouvoirs sauf les suivants : établir des arrêtés (*by-laws*), fermer une école, formuler une requête auprès d'une municipalité, congédier ou suspendre les services d'un enseignant ou encore tenir des audiences publiques.

Le district scolaire est le fondement du système scolaire albertain. Mais, depuis 1937, les responsabilités administratives locales peuvent être également exercées par des « divisions scolaires » regroupant des districts ruraux, des villages et des villes. En 1986, 146 juridictions scolaires gèrent les services éducatifs de quelques 1 496 écoles. Les districts ou divisions peuvent être publics non confessionnels, ou encore séparés et confessionnels. La province est répartie selon une double carte scolaire pour accommoder les 91 juridictions publiques et les 55 districts séparés. Le terme « séparé », en Alberta, signifie de confessionnalité autre que celle de la majorité. Ainsi, bien qu'il s'agisse d'une exception, il existe une commission scolaire catholique publique à Saint-Albert et un district séparé protestant sur le même territoire.

Le système de districts et de divisions scolaires a eu pour effet de créer deux paliers locaux d'intervention. Le premier, celui qui garde le pouvoir décisionnel, est le conseil de division

2. Description du système scolaire

Un remaniement de la loi scolaire a été voté en 1988 et promulgué le 31 décembre de la même année, faisant suite au rapport publié, en 1985, par le « Policy Advisory Committee for the School Act Review », intitulé *Partners in Education*. D'après cette loi scolaire, l'Alberta se réserve toutes les responsabilités constitutionnelles en matière d'éducation. Cette loi a été jugée plus centralisatrice que la précédente et de nombreux pouvoirs demeurent aux mains du lieutenant-gouverneur en conseil (Peters, 1989). En ce qui a trait à la langue, la loi précise :

4) *Every student is entitled to receive school instruction in English.*

5) (1) *If an individual has rights under section 23 of the Canadian Charter of Rights and Freedoms to have his children receive school instruction in French, his children are entitled to receive that instruction in accordance with those rights wherever in the Province those rights apply.*

(2) *The Lieutenant Governor in Council may make regulations respecting anything that may be required to give effect to subsection (1).*

6) (1) *A board may authorize the use of French or any other language as a language of instruction.*

(2) *The Minister may make regulations governing the provision of instruction in any language authorized under subsection (1).*

Cette mention des droits de la minorité de langue officielle reconnaît tout d'abord l'autorité du ministre et du lieutenant-gouverneur en conseil. Ensuite, par la clause « *wherever in the Province those rights apply* », un doute est laissé quant à l'admissibilité aux droits; l'interprétation en revient au ministre. Enfin, l'instruction en français est placée au même rang que l'instruction dans toutes les langues autres que l'anglais.

La *Loi sur l'Éducation* précise que le ministre de l'Éducation peut présenter des décrets dans quatre domaines particuliers : 1) les buts et les normes de l'éducation, 2) les programmes d'études pour toutes les écoles, 3) les programmes d'études soumis par une commission scolaire et 4) les droits des commissions scolaires à dispenser l'instruction religieuse. De plus, le ministre peut réglementer plusieurs domaines, dont :

- l'inspection des élèves, des enseignants, des écoles et des programmes d'études;
- la formation et la dissolution de districts ou de divisions scolaires;
- les crédits, les certificats et les diplômes;
- les subventions de base accordées aux juridictions scolaires, par élève;
- l'embauche de surintendants;
- l'évaluation des élèves.

apprend le français comme langue maternelle. L'équivalent de 74,8 p. 100 des enfants d'âge scolaire est donc assimilé et parle la langue de la majorité. Aussi, des classes d'accueil ont été mises sur pied pour franciser les élèves dont la langue maternelle est l'anglais et dont les parents sont admissibles à l'instruction en vertu des alinéas 23(1)a) et 23(1)b) ainsi que du paragraphe 23(2) de la Charte.

Le tableau II-17 décrit les progrès réalisés de 1986 à 1989. Aux fins de comparaison avec les autres provinces canadiennes, nous avons exclu des statistiques 1) les inscriptions à la maternelle (*Early Childhood Services*), 2) les 33 élèves fréquentant en 1988-1989 le collège Mathieu de Gravelbourg en Saskatchewan, 3) les 45 élèves ne suivant, en 1988-1989, que le cours de « Langue et littérature » en 10^e, 11^e et 12^e années.

Tableau II-17

Comparaison des effectifs et des écoles publiques, Alberta, 1986-1987, 1988-1989

Écoles dispensant l'enseignement	1986-1987	1988-1989	Augmentation (en %)	
			1986-1987	1988-1989
Effectifs 1 ^{re} à 12 ^e année	1 575	1 912	21,4	50,0
Écoles homogènes	2	3		
Effectifs 1 ^{re} à 8 ^e année	526	943	79,3	

Source : Ministère de l'Éducation de l'Alberta. *Information Bulletin* (1989, p.27), *List of Alberta Elementary Schools et List of Alberta Secondary Schools*.

Ainsi, en 1988-1989, 12 juridictions scolaires, dont une de la Défense nationale à Medley, offrent l'enseignement à la minorité francophone. Les effectifs dans les écoles dispensant l'instruction à la minorité ont augmenté de 21,4 p. 100 (337 élèves) entre 1986-1987 et 1988-1989. Ceux des écoles homogènes ont augmenté de 79,3 p. 100, soit 417 élèves.

D'autre progrès se réalisent : en septembre 1989, une nouvelle école homogène ouvre ses portes à Edmonton, et l'école Maurice-Lavallée devient une école primaire et secondaire en recevant les inscriptions francophones de l'école J.H. Picard.

Enfin, pour l'année scolaire 1989-1990, Statistique Canada estime à 1 930 élèves les effectifs de la 1^{re} à la 12^e année dans les écoles offrant des programmes d'enseignement à la minorité francophone, soit une augmentation de 1 p. 100 par rapport aux effectifs de 1988 et de 26,6 p. 100 par rapport à ceux de 1986.

Tableau II-15

Écoles publiques dispensant l'instruction à la minorité, Alberta, 1986

Écoles*	Effectifs (1 ^{re} à 12 ^e année)**	Population minoritaire (de 6 à 17 ans)***	Effectifs L.M.F.*** (en %)	Clientèle admissible***	Effectifs C.A.*** (en %)
17	1 575	5 318	29,6	21 093	7,5

Sources :

- * Ministère de l'Éducation de l'Alberta. *List of Alberta School Jurisdictions Offering French Language Instruction Under Sections 5 and 6 of the School Act*, 1989.
- ** Ministère de l'Éducation de l'Alberta. *Information Bulletin*, 1989, p.27.
- *** Voir le tableau II-5.

Tableau II-16

Écoles publiques homogènes, Alberta, 1986

Écoles homogènes*	Effectifs (1 ^{re} à 8 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
2	526	5 318	9,9	21 093	2,5

Sources :

- * Ministère de l'Éducation de l'Alberta. *List of Alberta School Jurisdictions Offering French Language Instruction Under Sections 5 and 6 of the School Act*, 1989.
- ** Voir le tableau II-5.

En 1986, deux écoles françaises homogènes⁴⁸ comptent des effectifs francophones de 526 élèves de la 1^{re} à la 8^e année, soit l'équivalent de 9,9 p. 100 de la population totale des enfants d'âge scolaire (de 6 à 17 ans) de langue maternelle française (tableau II-16). Ce sont les écoles Maurice-Lavallée d'Edmonton et Sainte-Anne de Calgary. Cette population des écoles homogènes représente l'équivalent de 2,5 p. 100 de la clientèle admissible en vertu de l'alinéa 23(1)a).

En 1988, une troisième école homogène ouvre ses portes, l'école Héritage de Jean-Côté à Rivière-la-Paix. Elle offre l'enseignement à 207 élèves de la 1^{re} à la 9^e année. Cette dernière école a été créée sous l'égide d'une commission scolaire régionale francophone, celle de Saint-Isidore.

Les taux d'assimilation de la population d'âge scolaire sont élevés en Alberta. En effet, selon les données que nous avons compilées à partir du recensement de 1986, l'équivalent de 25,2 p. 100 seulement des enfants de 6 à 17 ans admissibles en vertu de l'alinéa 23(1)a)

L'Alberta appartient au groupe de provinces dont la minorité de langue officielle est d'importance intermédiaire⁴⁴ comme c'est le cas des Territoires du Nord-Ouest et du Yukon (3 p. 100), de la Saskatchewan (2,6 p. 100) ainsi que de la Colombie-Britannique (1,8 p. 100). Les bassins de populations francophones se regroupent à Edmonton, à Calgary, à Rivière-la-Paix, à Morinville-Legal, à Saint-Paul, à Bonnyville et à Plamondon-Lac La Biche.

Historiquement, la francophonie s'est d'abord implantée en Alberta grâce à l'immigration des coureurs des bois et des missionnaires. Pendant la période pré-confédérative, avant la Première Guerre mondiale et de 1928 à 1930, cette présence francophone est graduellement estompée par les vagues d'immigration venues surtout d'Europe (Munroe, 1974). En raison de ces immigrations successives, le poids démographique des francophones en Alberta se trouve aujourd'hui réduit sur le plan politique : les minorités d'origines ukrainienne et allemande sont plus nombreuses. Cette situation démographique crée un climat où la reconnaissance de la langue de la minorité française entre en compétition avec celle des autres ethnies.

L'enseignement du français par les programmes d'immersion a connu un réel succès en Alberta. Ce modèle d'enseignement a d'ailleurs été repris par les groupes minoritaires allemands et ukrainiens. L'engouement pour l'immersion a longtemps atténué les distinctions entre l'enseignement d'une langue seconde par les programmes d'immersion et l'enseignement de la langue maternelle à la minorité de langue officielle. Ainsi, avant 1984, le ministère de l'Éducation ne distinguait pas les effectifs qui étudiaient le français langue maternelle de ceux qui l'apprenaient par immersion. La population francophone elle-même s'y était amalgamée jusqu'à ce que les revendications de l'Association Georges-et-Julie-Bugnet viennent favoriser la reconnaissance publique des divers programmes et de leurs modalités particulières.

En 1986, selon le ministère de l'Éducation de l'Alberta, l'instruction dans la langue de la minorité est offerte dans 17 écoles des commissions scolaires de la province et touche 1 575 élèves de la 1^{re} à la 12^e année (tableau II-15). En outre, 5 318 enfants de 6 à 17 ans sont de langue maternelle française⁴⁵. C'est donc dire que parmi la population d'âge scolaire (de 6 à 17 ans) dont la langue maternelle est le français, l'équivalent de moins du tiers (29,6 p. 100) reçoit son instruction dans sa langue maternelle dans des programmes destinés à la minorité.

Les effectifs dans des programmes d'instruction destinés à la minorité représentent l'équivalent de 7,5 p. 100 de la clientèle d'âge scolaire admissible en vertu de l'alinéa 23(1a)⁴⁶. Nous avons établi cette clientèle à 21 093 enfants⁴⁷. Selon les données de Statistique Canada, en 1992, la clientèle admissible en vertu de l'alinéa 23(1a) s'élèvera à 22 628, soit une augmentation de 7,3 p. 100, de 1986 à 1992 (Paillet, 1990).

suffisant », de la nature et de la portée du contrôle de la gestion scolaire, de la compatibilité des droits linguistiques et confessionnels, et de l'obligation de la part du gouvernement albertain d'enchâsser les droits constitutionnels dans la législation provinciale.

B. LE CONTEXTE ACTUEL

1. Statistiques

D'après le recensement de 1986⁴², la proportion de la population de l'Alberta dont la langue maternelle est le français s'élève à 2,4 p. 100, soit 56 245 personnes. Alors que la population totale de la province est en hausse de 5,7 p. 100 depuis 1981 (128 105 personnes), la proportion de la population francophone a diminué de 0,4 point depuis 1981, mais demeure stable comparativement à celle de 1976 (tableau II-14).

Tableau II-14

Population totale de langue maternelle française, Alberta, 1976, 1981, 1986

Population totale		L.M.F.	L.M.F./ population totale (en %)	
1976	1 838 040	44 440	2,4	
1981	2 237 725	62 145	2,8	
1986	2 365 830	56 245 *	2,4	
1986	2 365 825	62 215 **	2,6	

* Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
** Langue maternelle unique (française) et doubles (anglais et français).

Source : Statistique Canada.

Grâce à une période de prospérité, l'Alberta a connu une forte immigration de la fin des années 1970 au début des années 1980. Aussi la population totale de la province a-t-elle augmenté de 28 p. 100 entre 1976 et 1986. Par ailleurs, l'immigration de nombreuses personnes de langue maternelle française au cours de cette décennie a mis un frein à l'assimilation d'une bonne partie de la minorité de langue officielle. Cependant, cette minorité a diminué lorsque les conditions économiques se sont détériorées; elle a subi une perte nette de 5 900 personnes de langue maternelle française en cinq ans (1981 à 1986).

En compilant les choix de double langue maternelle française et anglaise avec ceux de langue maternelle unique (française), nous constatons que la population dont la langue maternelle est le français s'élève à 62 215 personnes, soit 2,6 p. 100 de la population de la province⁴³. Ces chiffres reflètent mieux la communauté visée par l'article 23 que les données ajustées puisque cet article n'exige pas que la langue maternelle soit l'unique langue maternelle déclarée.

- 1978 : Afin de répondre à l'intérêt grandissant pour l'immersion en français langue seconde, un énoncé de politique indique qu'une commission scolaire doit implanter un programme de français si un conseil consultatif local (Local Advisory Board) en fait la demande. La « Language Services Branch » est établi au ministère de l'Éducation pour appuyer les programmes de langues secondes : français, allemand, ukrainien et français langue maternelle.
- 1982 : Le Règlement n°490/82 oblige les commissions scolaires qui désirent offrir l'enseignement en français à présenter au ministre de l'Éducation une résolution à cet effet; elles doivent également assurer l'enseignement de l'anglais à raison d'un minimum de 300 minutes par semaine de la 3^e à la 6^e année, de 150 minutes par semaine de la 7^e à la 9^e année et de 125 minutes par semaine de la 10^e à la 12^e année.
- 1983 : Ouverture de la première école française fondée sur les critères d'admissibilité de l'article 23 à Edmonton : l'école Georges-et-Julia-Bugnet.
- 1984 : Ouverture d'écoles francophones primaires. L'Edmonton Catholic School Board ouvre l'école Maurice-Lavallée et le Calgary Catholic School Board ouvre l'école Sainte-Anne.
- 1985 : Jugement de la cour du banc de la reine dans la cause *Mahé et al. c. le gouvernement albertain*. Les francophones ont droit à « un degré de gestion exclusive de leur éducation ».
- 1987 : Proposition à la minorité francophone d'Edmonton du modèle de gestion « *Management of Official Minority Language Education* » par l'Edmonton Catholic School Board.
- 1987 : Arrêt de la cour d'appel dans la cause *Mahé et al. c. la reine*. Les franco-phones ont droit à la gestion exclusive de leurs écoles, mais le nombre d'élèves est jugé insuffisant à Edmonton pour l'établissement d'un système de gestion scolaire parallèle à celui de la majorité.
- 1988 : Ouverture de l'école Héritage de Jean-Côté de la 1^{re} à la 9^e année. Elle est gérée par la commission scolaire régionale francophone de Saint-Isidore dans la région de Rivière-la-Paix.
- 1988 : La Cour suprême du Canada confirme, dans l'affaire *Mercurie*, que le français et l'anglais sont les langues officielles de la Saskatchewan et de l'Alberta.
- 1988 : La *Loi linguistique* fait de l'anglais la seule langue officielle de l'assemblée législative et des tribunaux de l'Alberta. Des droits limités sont maintenus pour le français.
- 1988 : Le *School Act* fait mention du droit à l'instruction en français pour la minorité de langue officielle en vertu de l'article 23 de la *Charte*.
- 1988 : Une politique ministérielle régite l'offre de services à la minorité de langue officielle. Elle indique que le « nombre suffisant » d'enfants admissibles à l'instruction dans la langue de la minorité peut probablement être atteint dans cinq régions de la province. Il laisse cependant le choix aux commissions scolaires de fournir des services.
- 1989 : La Cour suprême du Canada entend les plaidoiries dans l'affaire *Mahé et al. c. la reine*. Elle doit se prononcer notamment sur les questions du « nombre

III. ALBERTA

A. HISTORIQUE

- 1842 : Fondation de la première école française à la mission du lac Sainte-Anne par un missionnaire catholique. Des écoles françaises et anglaises sont ensuite établies sous les auspices des églises catholiques et protestantes.
- 1880 : *La Loi sur les Territoires du Nord-Ouest* garantit les droits des minorités religieuses catholiques et protestantes à l'établissement d'écoles séparées, soit catholiques ou protestantes, financées à même les fonds publics.
- 1884 : La province accorde aux syndicats d'un district séparé les mêmes droits et devoirs qu'à ceux d'un district public, c'est-à-dire non confessionnel.
- 1892 : L'instruction en anglais au primaire devient obligatoire dans les matières suivantes : lecture, écriture, orthographe, arithmétique, géographie, grammaire, histoire de l'Angleterre et du Canada, littérature anglaise et même littérature française.
- 1896 : Le ministère de l'Éducation autorise (« permet ») l'enseignement du français aux francophones; cet enseignement est toutefois limité à une heure par jour.
- 1901 : L'enseignement de toute langue autre que l'anglais est permis mais en dehors de l'horaire régulier, soit après 15 h.
- 1905 : L'Alberta devient province canadienne.
- 1909 : *La Loi sur l'Alberta* préserve les droits des minorités religieuses et garantit l'égalité de traitement par la répartition des fonds publics.
- 1913 : Première réorganisation des districts scolaires : fusion de districts indépendants en districts consolidés.
- 1925 : Une commission scolaire peut autoriser que le français soit la langue d'instruction des francophones en 1^{re} et 2^e années.
- 1937 : Deuxième réorganisation des districts scolaires : fusion de districts ruraux et urbains en « divisions » scolaires. Un comité consultatif local appelé « Local Advisory Board » remplace le conseil de district local.
- 1964 : La loi est amendée pour permettre au français de devenir la langue d'instruction des francophones de la 1^{re} à la 9^e année. Toutefois, le temps alloué à l'enseignement en français varie en fonction des années : 1^{re} et 2^e années, une heure d'anglais; 3^e année, deux heures d'anglais; de la 4^e à la 9^e année, une heure par jour de français, et les manuels autorisés sont uniquement en anglais.
- 1964 : Une troisième réorganisation des districts scolaires en grandes divisions — rurales et municipales — et en grands districts scolaires prive les francophones de la gestion effective de leurs écoles que leur permettait la division en petites unités scolaires.
- 1968 : Le temps alloué à l'instruction en français des francophones de la 3^e à la 9^e année augmente à 50 p. 100 de la journée.
- 1971 : Un amendement à la loi et aux règlements scolaires place toutes les langues autres que l'anglais sur un pied d'égalité; l'instruction dans ces classes est permise jusqu'à la 12^e année.

La revendication des droits devant les tribunaux favorise les discussions avec les instances gouvernementales. Le dépôt de la contestation judiciaire en Colombie-Britannique coïncide avec la nouvelle *Loi sur l'éducation* et intensifie les pressions pour la reconnaissance des droits à l'instruction et à la gestion scolaire de la minorité. Cependant, des recommandations de la Royal Commission on Education (1988) émerge une vision centralisatrice sous un contrôle plus strict du gouvernement (Peters, 1989, p. 14). Dans ce contexte, la reconnaissance des droits de la minorité de langue officielle devra se faire de façon vigoureuse et ferme, et l'interprétation des tribunaux apportera à cet égard un appui important.

C. RÉSUMÉ

Les gains de la minorité francophone se font lentement en Colombie-Britannique malgré le fait que les droits font toujours l'objet de nouvelles négociations avec les instances locales et majoritaires. Historiquement, c'est en 1968 que le ministère de l'Éducation donne son approbation officielle à un programme spécifiquement créé pour la minorité francophone. Grâce à leurs efforts et à leur dynamisme, des groupes de parents ont réussi, ces dernières années, à faire reconnaître une fois pour toutes les droits des minorités aux services éducatifs. C'est la conclusion principale que nous tirons de l'exposé sur la situation scolaire de la minorité de langue française.

Depuis l'instauration du PCDF, les effectifs scolaires dans les programmes dispensant l'instruction à la minorité de langue officielle sont en croissance constante, passant de 200 en 1979 à 1 694 en 1988-1989. La majeure partie de ces effectifs (71,8 p. 100) reçoit l'instruction dans des écoles non homogènes, soit dans 36 écoles à « double » ou à « triple voie » en 1988-1989. En 1986, l'équivalent de 10,3 p. 100 des enfants d'âge scolaire admissibles en vertu de l'alinéa 23(1)a) étudie dans des programmes d'enseignement destinés à la minorité. Par ailleurs, il n'existe, cette même année, que deux écoles homogènes dispensant l'enseignement à l'équivalent de 2,4 p. 100 des enfants d'âge scolaire admissibles en vertu de l'alinéa 23(1)a). Ces données nous portent à conclure qu'en Colombie-Britannique, des recherches devraient être entreprises pour déterminer quel éventail de services peut, de façon viable, satisfaire une clientèle éventuelle importante, soit 14 815 enfants, âgés de 6 à 17 ans, admissibles en vertu de l'alinéa 23(1)a).

Au chapitre de la gestion scolaire, les comités consultatifs employés comme mécanismes visant à accorder à la minorité un droit de regard sur l'instruction ont été jugés inadéquats par les parents. D'autres mécanismes sont à l'étude, notamment celui de quatre commissions scolaires régionales.

La minorité de langue française de la Colombie-Britannique n'échappe pas aux problèmes inhérents aux comités consultatifs. Tout d'abord, comme les comités de parents d'écoles ou encore les « comités avisés » auprès des commissions scolaires n'avaient pas jusqu'à la de statut légal, il n'en existe que cinq pour toute la minorité francophone. Peut-être seront-ils d'ailleurs abolis lorsque les parents de la majorité formeront leur propre comité puisqu'un seul comité par école peut être formé.

Les comités consultatifs n'ont aucune autorité ni aucune responsabilité : ils « avisent ». Les commissions scolaires peuvent prendre toutes les décisions jugées nécessaires pour répondre aux besoins de la majorité et à ceux de la minorité. Toutefois, les comités consultatifs peuvent constituer une étape vers une gestion scolaire pour la minorité plus adéquate et uniformisée. Cependant, les parents persistent dans leurs efforts auprès des unités locales et exercent des pressions sur le ministre de l'Éducation afin d'obtenir une commission scolaire provinciale. L'établissement d'une commission scolaire provinciale fait d'ailleurs partie des recommandations d'un rapport remis à l'Association du programme cadre de français en 1990. En effet, Xatruch suggère qu'une double carte scolaire pour la province accommoderait trois ou quatre commissions scolaires régionales de langue française.

Quant à l'offre de services éducatifs à la minorité, les commissions scolaires majoritaires sont « difficiles; elles ne comprennent pas », de dire une présidente de comité. Chaque victoire, chaque gain résultent d'un travail inlassable et d'efforts constants. Pour obtenir une classe, un autre local, une école, les moyens de transport, les classes d'accueil, le budget, etc., il faut procéder par étapes et y mettre le temps.

Enfin, la politique ministérielle, la *Circular 39*, laisse encore l'interprétation des droits et des services à la discrétion des 22 commissions scolaires qui offrent un programme cadre de français. C'est à elles que reviennent les décisions en ce qui touche l'offre de services et la qualité de ces services. La mise en œuvre de mesures visant à assurer le respect des droits conférés par l'article 23 se trouve ainsi fragmentée, sous réserve des décisions de nombreuses commissions scolaires locales.

Le 21 mars 1989, l'Association des parents du programme cadre de français (APPCF) et la Fédération des Franco-Colombiens (FFC) lançaient la campagne « Opération loi scolaire ». Cette double opération visait, en premier lieu, à sensibiliser les collectivités francophones quant au bien-fondé de l'éducation dans la langue de la minorité. Une contestation judiciaire était parallèlement déposée, alléguant :

1. que la province n'a pas rempli son devoir législatif;
2. que la province n'a pas forcé les conseils scolaires à offrir programmes et écoles;
3. que la province a nié le droit de gestion des francophones. (APPCF, 1989, p. 2)

Toutefois, c'est la politique ministérielle, la *Circular* 39 de 1987, qui régit encore les modalités du programme cadre de français (PDCF). Sous l'égide du « Modern Languages Services Branch », le ministère de l'Éducation établit les directives relatives à cette politique :

- « le nombre suffisant » : l'équivalent de dix élèves à plein temps au primaire, 15 élèves au secondaire pour fonder un programme cadre;
- les critères d'accès au PDCF : les alinéas 23(1)a) et 23(1)b) ainsi que le paragraphe 23(2);
- les établissements homogènes : la où le nombre le justifie;
- le transport des élèves aux écoles françaises : comme pour les écoles anglophones;
- la sélection des enseignants : excellente connaissance de la langue orale et écrite, de l'histoire, de la culture et des traditions canadiennes-françaises;
- les matières enseignées : cours complet de la 1^{re} à la 12^e année en 1992;
- l'enseignement de l'anglais : de 10 à 20 p. 100 de la journée scolaire après la 2^e année;
- le financement : fonds de démarrage et d'expansion fournis par le gouvernement fédéral; subventions (« *support grants* »), pour tous les élèves, versées par le gouvernement provincial;
- les manuels dont l'usage est permis.

Cette politique, n'étant toutefois pas intégrée à la loi scolaire, elle fait office de guide et laisse la gestion des écoles homogènes ou des classes françaises dans les écoles anglaises ou d'immersion à la discrétion des commissions scolaires publiques anglophones.

La politique ministérielle suggère encore la formation, par les parents d'élèves inscrits dans le programme cadre de français, de comités consultatifs dits « comités avisés » après des commissions scolaires anglophones. À cet égard, la politique se lit comme suit :

School boards will assist Francophone parents whose children attend Programme Cadre de Français to form an Advisory Committee to the school board. The mandate of the Committee may vary from district to district and should be worked out by the Committee and the School Board.

The Advisory Committee should be granted the maximum amount of responsibility with respect to Programme Cadre within the context of the necessary administrative procedures required for conducting the business of the whole district. (Province de la Colombie-Britannique, 1987, p. 4-5)

Depuis l'instauration de la politique ministérielle, la nouvelle loi scolaire de 1989 rend obligatoire la formation de comités de parents pour les écoles de la majorité. Toutefois, cette même loi précise qu'il n'y aura qu'un comité de parents par école.

Comparaison des effectifs et des écoles publiques, Colombie-Britannique, 1986-1987, 1988-1989

	1986-1987	1988-1989	Augmentation (en %)
Effectifs dans les écoles offrant l'instruction dans la langue de la minorité (1 ^{re} à 12 ^e année)	1 525	1 694	11,1
Nombre d'écoles	36	39	8,3
Effectifs dans les écoles homogènes (1 ^{re} à 8 ^e et 1 ^{re} à 10 ^e année)	357	478	33,9
Nombre d'écoles	2	3	50,0

Source : Ministère de l'Éducation de la Colombie-Britannique, 1986-87/1988-89 *Enrolment Reports*.

Étant donnée la concentration de la minorité francophone dans la région de Vancouver et sa dispersion ailleurs dans toute la province, les Franco-Colombiens semblent, pour l'avenir, préconiser l'établissement de petites écoles (Hales, 1988) qui peuvent être tout aussi efficaces, sinon plus, que les grandes écoles et unités scolaires (Coleman et Larocque, 1986). L'établissement de petites écoles peut, en effet, permettre à une population moins importante d'avoir accès à l'instruction dans un programme de la minorité puisque, selon cette recherche, la qualité de l'instruction et de l'éducation dans une petite école peut être comparable à celle d'une grande école.

2. Description du système scolaire

Le système scolaire de la Colombie-Britannique est neutre (non-confessionnel) et l'ensei-
gnement religieux est uniquement permis dans les écoles indépendantes (privées). Une seule
carte scolaire découpe la province en 92 districts dotés de « commissions » scolaires, gérées
par un conseil dont le nombre des membres varie (3,5,7, ou 9), à la discrétion du ministre
de l'Éducation, selon la population rurale ou urbaine. Les commissions sont élus tous les
trois ans.

La *Loi sur l'éducation* de la Colombie-Britannique, [le *projet de loi* n° 37 (1989)], fait
brièvement mention de l'article 23 de la *Charte*. À la section 2, paragraphe 5(4), elle donne
au lieutenant-gouverneur de la province le pouvoir d'établir des règlements :

- respecting the provision of educational programs in languages other than English,
- to give effect to section 23 of the Canadian Charter of Rights and Freedoms, and
- determining the manner in which a power, duty or function of a board may be performed or exercised under this Act with respect to students referred to in subsection (2).

Tableau II-12

Écoles publiques homogènes, Colombie-Britannique, 1986

Écoles*	Effectifs (1 ^{re} à 8 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
2	357	2 602	13,7	14 815	2,4

Sources :

* Ministère de l'Éducation de la Colombie-Britannique. *French Language Education in British Columbia. 1986-87 Enrolment Report*. 1986.

** Voir le tableau II-5.

En 1986, deux écoles homogènes⁴¹ françaises desservent, de la 1^{re} à la 8^e année, une population scolaire francophone comptant l'équivalent de 13,7 p. 100 (357 enfants) de la population totale des enfants d'âge scolaire (de 6 à 17 ans) de langue maternelle française (tableau II-12). Ce sont les écoles Anne-Hébert de Vancouver et Victor-Brodeur de Victoria. La population de ces écoles équivaut à 2,4 p. 100 de la clientèle admissible en vertu de l'*alinéa 23(1a)*.

Toutefois, au chapitre des écoles homogènes, des progrès sensibles ont été accomplis depuis 1986. En 1987, une troisième école est devenue homogène à Vancouver-nord. Les effectifs des écoles homogènes ont augmenté de 121 élèves (33,9 p. 100) entre 1986 et 1989 et ce, de la 1^{re} à la 10^e année. En outre, les effectifs de la 1^{re} à la 12^e année dans les écoles offrant l'instruction au programme cadre ont augmenté de 11,1 p. 100, passant à 1 694 élèves. Le tableau II-13, titre du *Enrolment Report* du ministère de l'Éducation de la Colombie-Britannique, résume ces données pour 1986-1987 et 1988-1989.

Enfin, pour l'année scolaire 1989-1990, Statistique Canada estime à 1 825 élèves les effectifs de la 1^{re} à la 12^e année dans les écoles offrant l'instruction au programme cadre, soit une augmentation de 7,7 p. 100 par rapport aux effectifs de 1988 et de 19,7 p. 100 par rapport à ceux de 1986.

française en Colombie-Britannique, existe en 1986 dans 36 écoles (*Enrolment Report*, 1986). Ces dernières sont, à l'exception de deux écoles homogènes, des écoles « à double et à triple voies », c'est-à-dire que les classes françaises cohabitent avec les classes anglaises et (ou) d'immersion. Les critères d'admission à ces programmes n'étant pas énoncés dans l'article 23, d'après les données dont nous disposons, les effectifs regrouperaient des élèves autres que les ayants droit de la *Charte*. Au total, indique le ministre (1986), le programme cadre est offert à 1 525 élèves (tableau II-11) de la 1^{re} à la 12^e année sous l'égide de 22 districts scolaires. Ces effectifs constituent l'équivalent de 58,6 p. 100 de la population d'âge scolaire de français langue maternelle³⁸ de 6 à 17 ans³⁹. Ils touchent tout au plus l'équivalent de 10,3 p. 100 de la clientèle des ayants droit en vertu de l'alinéa 23(1a) de la *Charte*; nous avons établi cette clientèle à 14 815 enfants⁴⁰, âgés de 6 à 17 ans.

Nous remarquons qu'en Colombie-Britannique, en 1986, l'équivalent de la moitié des enfants parlant la langue de la minorité étudie dans cette langue. C'est dire que l'autre moitié de la population scolaire parlant la langue de la minorité risque d'être assimilée au cours de ses études primaires et secondaires.

Par ailleurs, l'équivalent d'un enfant sur cinq (17,6 p. 100) admissible en vertu de l'alinéa 23(1a) est de langue maternelle française, alors que l'équivalent d'un enfant sur dix (10,3 p. 100), admissibles en vertu de l'alinéa 23(1a), reçoit l'instruction dans la langue de la minorité.

Tableau II-11

Écoles publiques dispensant l'instruction à la minorité, Colombie-Britannique, 1986

Écoles*	Effectifs (1 ^{re} à 12 ^e année)*	Population minoritaire (de 6 à 17 ans)**	Effectifs L.M.F.** (en %)	Clientèle admissible**	Effectifs C.A.** (en %)
36	1 525	2 602	58,6	14 815	10,3

Sources et légendes :

* Ministère de l'Éducation de la Colombie-Britannique. *French Language Education in British Columbia*, 1986-87 *Enrolment Report*, 1986.

** Voir le tableau II-5.

Tableau II-10

Population totale de langue maternelle française, Colombie-Britannique, 1976, 1981, 1986

Population totale		L.M.F.*		L.M.F./ population totale (en %)	
1976	2 466 605	38 430	1,6		
1981	2 744 465	45 615	1,7		
1986	2 883 375	45 845 **	1,6		
1986	2 883 365	50 925 ***	1,8		

* L.M.F. = Langue maternelle française.
** Données ajustées par Statistique Canada aux fins de comparaison avec les années antérieures.
*** Langue maternelle unique (française) et double (anglaise et française).

Source : Statistique Canada.

La Colombie-Britannique appartient au groupe de provinces dont la minorité de langue officielle est d'importance intermédiaire³⁷, avec l'Alberta et la Saskatchewan (2,6 p. 100) ainsi que les Territoires du Nord-Ouest et le Yukon (3 p. 100). Historiquement, la province a d'abord été peuplée par l'immigration d'origine européenne, surtout française, composée de coureurs des bois et d'aventuriers. En 1838, les personnes d'origine française constituant alors « environ 60 p. 100 de la population d'origine européenne, jouent un rôle important dans la colonisation de cette province » (Dufréne *et al.*, 1988, p. 271). Les premiers missionnaires y arrivent en 1840. Cette première immigration fut suivie d'une forte vague d'immigration chinoise dans les années 1880.

La population francophone d'aujourd'hui provient surtout d'une immigration relativement récente survenue à la faveur de la croissance économique qu'a connue cette province durant les années 1950 et 1960. En effet, Savas (1988) démontre qu'en 1988, 85,8 p. 100 des Franco-Colombiens ne sont pas nés dans cette province. Ils proviennent largement du Québec (42,4 p. 100), de la Saskatchewan (13,3 p. 100), de l'Ontario (12,7 p. 100) et de l'Alberta (12 p. 100). La population francophone se regroupe autour de Vancouver (Burnaby, Coquitlam, Surrey, Delta, Richmond, Vancouver ouest), dans l'Okanagan, à Abbotsford, à Prince George et à Nanaimo.

Sur le plan scolaire, ce n'est qu'en 1968, presque cent ans après l'entrée de cette province dans la Confédération canadienne, qu'est offert le premier programme partiellement français pour francophones à Coquitlam. Ce programme consacre 80 p. 100 de la journée scolaire au niveau de la maternelle dite préscolaire. Cinq ans plus tard, ce programme est amalgamé aux cours d'immersion en français pour anglophones. Ce n'est qu'en 1985 qu'il réapparaît spécifiquement comme programme cadre de français.

Selon le ministère de l'Éducation de la Colombie-Britannique, le « programme cadre de français », puisque c'est ainsi que se nomme l'instruction dans la langue de la minorité

- 1984 : Le ministère de l'Éducation embauche un coordonnateur afin de répondre spécifiquement aux besoins du programme cadre.
- 1987 : Le gouvernement adopte une politique connue sous le nom de *Circular 39*. Cette politique assure le financement du programme cadre de français à même les fonds publics et fait valoir l'importance d'établissements autonomes lorsque le nombre le justifie. L'instruction se fera en français sauf pour l'enseignement de l'anglais. Cette politique favorise la formation de comités consultatifs de la minorité chargés de conseiller la commission scolaire dans laquelle le programme cadre de français est instauré.
- 1987 : Le jugement rendu par le juge Patricia Proudfoot confirme que l'article 23 garantit l'accès à l'instruction à la minorité francophone, mais ne donne pas aux parents anglophones le droit à un programme d'immersion française.
- 1988 : La Royal Commission on Education dépose son rapport dans lequel elle recommande l'adoption de politiques et de procédures pour permettre aux parents et aux membres des collectivités de conseiller les commissions scolaires notamment par l'intermédiaire de comités consultatifs. Elle reconnaît en outre le droit de la minorité de langue officielle de choisir la langue d'instruction pour ses enfants.
- 1988 : L'Association des parents du programme cadre de français (APPCF) et la Fédération des Franco-Colombiens (FFC) lancent la campagne « Opération loi scolaire » qui vise à sensibiliser la collectivité et à faire reconnaître par les tribunaux les droits conférés par l'article 23 de la Charte.
- 1989 : *Le projet de loi n° 67* donne au gouverneur général de la province le pouvoir d'établir des règlements concernant l'article 23 de la Charte.
- 1990 : L'APPCF propose un modèle de gestion par commissions scolaires régionales (3 ou 4).

B. LE CONTEXTE ACTUEL

1. Statistiques

D'après le recensement de 1986, la proportion de la population de langue maternelle française³⁵ de la Colombie-Britannique s'élève à 1,6 p. 100 de la population totale de la province (45 845 personnes), soit une proportion de 0,1 point de moins qu'en 1981 et égale à celle de 1976 (tableau II-10). Cependant, en compilant les choix de double langue maternelle (française et anglaise) avec ceux de langue maternelle unique (française), nous comptons une population de 50 925 personnes de langue maternelle française, pour 1986³⁶. Ces derniers chiffres reflètent mieux la communauté visée par l'article 23 puisque cet article n'exige pas que la langue maternelle soit unique.

Par ailleurs, la population totale de la province ayant augmenté de 16 p. 100 depuis 1976 et de 5,1 p. 100 depuis 1981, la minorité de langue officielle bénéficie d'un taux de croissance bien inférieur à celui de la majorité; elle deviendra donc, à long terme, de plus en plus minoritaire.

Les données présentées dans les sections subséquentes de ce chapitre proviennent des associations minoritaires, des enquêtes menées auprès des ministères de l'Éducation de chaque province et territoire, de la compilation spéciale de Statistique Canada ainsi que des lois et des règlements adoptés. Enfin, pour compléter nos données, nous avons à l'occasion utilisé l'excellente étude de P. Foucher (1985) et celle des Conseils des ministres de l'Éducation (1983).

II. COLOMBIE-BRITANNIQUE

A. HISTORIQUE

1852 : Fondation des premières écoles, d'abord anglaises et confessionnelles. Toutefois, les rivalités entre les groupes religieux mènent à la demande d'écoles non-confessionnelles.

1871 : La Colombie-Britannique devient province canadienne.

1872 : *An Act Respecting Public Schools* établit l'éducation non-confessionnelle, payée à même les fonds publics.

1968 : Le premier programme public dit « bilingue » est offert à la maternelle à Coquitlam. Il s'agit d'une initiative locale en réponse aux demandes des parents francophones. Le ministère de l'Éducation donne son approbation au programme mais exige que 20 p. 100 de la demi-journée scolaire soient

donnés en anglais.

1971 : Le ministère de l'Éducation acquiesce à la demande des parents : 50 p. 100 de la journée scolaire seront donnés en français, de la 1^{re} à la 3^e année inclusivement, dans le programme bilingue de Coquitlam. La maternelle conserve la proportion de 80 p. 100 de la demi-journée donnée en français. Le premier programme d'immersion en français destiné aux anglophones est offert à Coquitlam. Le programme bilingue y est incorporé. Il faudra dix ans avant le rétablissement d'un programme pour francophones.

1978 : Le gouvernement émet une nouvelle directive et instaure le « Programme cadre de français » (PCDF) consacré à l'instruction dans la langue maternelle pour les francophones. Une commission scolaire doit instaurer un programme cadre si les parents de 10 enfants de niveau primaire résident dans un district scolaire en font la demande. Le programme cadre relève de la Direction des services des langues modernes du ministère de l'Éducation.

1979 : Le programme cadre de français débute dans neuf districts scolaires. Environ 200 élèves y sont inscrits.

1981 : Le gouvernement adopte une politique connue sous le nom de *Circular 146* et distingue trois programmes de français : le programme cadre pour franco-phones, l'immersion précocce et l'immersion tardive.

1984 : La première école française homogène, l'école Anne-Hébert, ouvre ses portes à Vancouver.

à conseiller les commissions scolaires majoritaires mais n'obtient aucun droit de gestion. Les modèles contractuels (Saskatchewan et Alberta) tentent de déléguer les responsabilités de la commission scolaire de la majorité à un groupe de parents de la minorité afin d'accorder à celui-ci un droit de regard sur les affaires d'une école en particulier. Les modèles représentatifs (Ontario) proposent des mécanismes permettant à un groupe de la minorité de prendre seul les décisions touchant l'instruction dans la langue de la minorité de la région.

Cependant, depuis 1982, des tentatives intéressantes ont été faites pour consolider ou mettre en vigueur des modèles de gestion dont la structure est parallèle à celle conçue pour la majorité. Ce fut le cas au Nouveau-Brunswick, en Ontario, en Saskatchewan, à l'Île-du-Prince-Édouard, au Québec et, plus récemment, en Colombie-Britannique. Ainsi, au Nouveau-Brunswick, le système scolaire, fondé sur le caractère linguistique, regroupe les conseils scolaires francophones et anglophones. Les trois conseils scolaires minoritaires pour francophones formés en 1981 sont devenus depuis des conseils scolaires ordinaires. En Ontario, deux conseils scolaires homogènes francophones ont été fondés en 1988 : celui de Toronto et celui d'Ottawa-Carleton. Ce sont les deux seuls conseils scolaires de l'Ontario fondés sur le caractère linguistique. En Saskatchewan, des conseils scolaires transaskois seront bientôt établis. Cette structure, assortie d'un Conseil général provincial, a été élaborée à la suite d'une entente signée entre le gouvernement fédéral et le gouvernement provincial. À l'Île-du-Prince-Édouard, la commission scolaire francophone de l'unité n° 5 est devenue une commission scolaire provinciale.

Au Manitoba, un modèle de conseils scolaires régionaux coiffés par une commission scolaire provinciale pour la minorité de langue française est à l'étude alors qu'en Colombie-Britannique, la minorité se penche sur le modèle des commissions scolaires régionales (3 ou 4).

Au Québec, des commissions scolaires linguistiques sont établies par la loi 107. Les dispositions de cette loi accordant le droit de gestion à la minorité anglophone n'entreront en vigueur qu'après confirmation de leur constitutionnalité par les tribunaux. En effet, la loi 107 a été soumise à la cour d'appel du Québec afin de déterminer si elle entre en conflit avec les droits confessionnels (catholiques et protestants) conférés par la *Loi constitutionnelle de 1867*.

D'importants progrès ont été accomplis ou sont en voie de l'être quant à l'obtention de mécanismes adéquats de gestion pour les minorités de langue officielle. D'autres restent à faire pour doter uniformément les minorités de langue officielle de mécanismes efficaces. Dans les sections suivantes, qui font état de la situation de l'éducation de la minorité de langue officielle dans chaque province et territoire, nous donnons une description des aspects touchant la reconnaissance des droits conférés par l'article 23 de la *Charte des droits et libertés*, plus particulièrement ceux se rapportant à l'instruction dans la langue de la minorité [alinéa 23(3)a)] et à la gestion [alinéa 23(3)b)].

majorité est elle-même constituée en conseil scolaire régulier. En pratique cependant, les conseils scolaires minoritaires sont devenus progressivement des conseils scolaires ordinaires. Depuis 1981, les trois conseils scolaires minoritaires desservant les francophones ont été transformés en conseils scolaires élus, semblables à ceux de la majorité. De fait, il ne reste plus qu'un seul conseil scolaire minoritaire anglophone, celui d'Edmundston.

2. Systèmes de gestion

Nous présentons maintenant un aperçu des systèmes de gestion scolaire desservant les groupes majoritaires dans les provinces et les territoires. Cet aperçu résume le contexte systémique dans lequel est appelé à s'insérer tout mécanisme de gestion visant à répondre aux besoins des minorités de langue officielle, conformément aux droits conférés en vertu de l'alinéa 23(3)b) de la *Charte*.

Les systèmes provinciaux de gestion scolaire sont généralement composés de trois paliers décisionnels : les commissions scolaires, le ministère de l'Éducation et les comités locaux. Le degré de contrôle exercé par le ministère de l'Éducation varie beaucoup d'une province à l'autre³¹. Les systèmes d'éducation des Maritimes et du Québec sont plus centralisés que ceux des autres provinces. Par comparaison, les ministères de l'Éducation de ces deux provinces délèguent moins de pouvoirs aux commissions scolaires et aux comités de parents. Les commissions scolaires sont, dans toutes les provinces canadiennes à l'exception des territoires, l'organisme régional et (ou) local chargé de l'administration scolaire³². La commission scolaire est gérée par un conseil de citoyens. Dans la majorité des provinces, les commissions d'écoles sont élus par les résidents du territoire relevant de la commission scolaire.

La structure des commissions scolaires telle que nous venons de la décrire comporte cependant certaines exceptions. À Terre-Neuve et en Nouvelle-Écosse notamment, le tiers des commissions sont élus alors que dans les autres provinces, tous les commissaires le sont. Autre exception : le Metro Toronto School Board et le Conseil scolaire de l'Île de Montréal, formés de délégués des commissions scolaires qui en sont membres, étudient les budgets et allouent les sommes nécessaires au financement de chaque commission; la gestion de ces sommes revient cependant aux commissions scolaires.

Le palier décisionnel local est représenté par des comités de parents et (ou) des comités d'école. La mesure dans laquelle les gouvernements³³ soutiennent des comités varie d'une province à l'autre.

Il existe quatre types de modèles de gestion scolaire adaptés spécifiquement aux besoins des minorités de langue officielle : les modèles consultatifs, contractuels, représentatifs et les modèles de gestion parallèles à la structure majoritaire³⁴. Certains de ces modèles sont déjà en vigueur, d'autres sont à l'état de projet. Les modèles consultatifs (Colombie-Britannique, Alberta, Saskatchewan, Manitoba, Nouvelle-Écosse et Terre-Neuve) reprennent la structure des comités de parents des écoles de la majorité. La minorité est ainsi encouragée

Dans le cas du Québec, comme nous l'avons vu précédemment, l'alinéa (1)a) de l'article 23 ne s'applique pas, en raison du droit d'en différer la promulgation que lui réserve l'article 59(2) de la *Charte canadienne des droits et libertés*. Tout enfant anglophone qui répond cependant aux critères établis en vertu de l'alinéa 23(1)b) et du paragraphe 23(2) peut recevoir l'enseignement en anglais. Il suffit que ses parents en fassent la demande à la commission scolaire de leur district.

Au Nouveau-Brunswick, les trois critères énoncés à l'article 23 s'appliquent mais ils sont assortis d'une condition additionnelle : l'enfant doit réussir au préalable un test oral d'admission destiné à vérifier sa connaissance de la langue française. Cette condition restreint l'accessibilité à l'instruction pour la minorité, dans la mesure où l'instruction n'est accordée qu'aux enfants dont la langue maternelle est déjà celle de la minorité.

D'autres provinces requièrent par ailleurs un nombre d'élèves supérieur à un pour accorder l'enseignement dans la langue de la minorité. Il s'agit de la Colombie-Britannique (10 par classe au primaire), de la Saskatchewan (15 élèves par groupe pour trois années consécutives), du Manitoba (23 élèves par niveau) et de l'Île-du-Prince-Édouard (55 élèves dans deux années consécutives).

Les autres provinces et territoires, soit l'Alberta, la Nouvelle-Écosse, Terre-Neuve, les Territoires du Nord-Ouest et le Yukon, n'ont pas encore établi de critères pour déterminer le nombre d'élèves requis pour l'offre de services.

Si le nombre établi est autre que un, le nombre requis pour le droit à l'instruction est donc fonction du nombre d'enfants correspondant au seul préalablement déterminé pour présenter une demande de services. Ainsi, en Colombie-Britannique, en Saskatchewan, au Manitoba et à l'Île-du-Prince-Édouard, le nombre qui justifie le droit à l'instruction est interprété en fonction de la demande d'un groupe plutôt que comme un droit individuel reconnu à chacun des ayants droit.

On note par ailleurs que seuls l'Ontario et le Nouveau-Brunswick ont établi un nombre minimum d'élèves au-delà duquel les autorités accordent automatiquement aux membres de la minorité intéressées des mécanismes de gestion scolaire. En Ontario notamment, ce nombre est de 300 élèves inscrits dans un programme de la minorité ou 10 p. 100 des inscriptions totales de la commission scolaire. Lorsque cette condition est satisfaite, le gouvernement ontarien établit, au sein de la commission scolaire de la majorité, une « section » chargée spécifiquement de gérer les affaires touchant l'instruction à la minorité. L'Ontario entend ainsi assurer le respect des droits de gestion conférés par l'alinéa 23(3)b). Enfin, au Nouveau-Brunswick, 30 élèves par niveau, à l'élémentaire, sont requis pour accorder à la minorité un conseil scolaire minoritaire. Ce conseil, originellement formé de trois membres nommés par le ministre de l'Éducation, fonctionne à toutes fins utiles comme un conseil scolaire ordinaire et gère l'instruction à la minorité au sein d'un district où la

<i>Nouvelle-Écosse</i>	
Droit en cause :	Instruction
Demande considérée :	Obtenir la désignation d'école académique
Nombre d'élèves requis :	Non spécifiée
Requérants autorisés :	Commission scolaire de la majorité
Autorité désignée :	Lieutenant-gouverneur en conseil sur recommandation du ministre de l'Éducation
Procédure établie par :	<i>Loi sur l'éducation de la Nouvelle-Écosse (1986)</i>
<i>Ile-du-Prince-Édouard</i>	
Droit en cause :	Instruction
Demande considérée :	Obtenir l'enseignement en français
Nombre d'élèves requis :	15 dans deux années consécutives
Requérants autorisés :	Parents résidents d'un district scolaire
Autorité désignée :	Commission scolaire de la minorité
Procédure établie par :	Amendement à la loi scolaire (1990)
<i>Terre-Neuve</i>	
Droit en cause :	Non spécifiée
Demande considérée :	Non spécifiée
Nombre d'élèves requis :	Non spécifiée
Requérants autorisés :	Non spécifiée
Autorité désignée :	Non spécifiée
Procédure établie par :	(Aucune procédure établie)
<i>Territoires du Nord-Ouest et Yukon</i>	
Droit en cause :	Non spécifiée
Demande considérée :	Non spécifiée
Nombre d'élèves requis :	Non spécifiée
Requérants autorisés :	Non spécifiée
Autorité désignée :	Non spécifiée
Procédure établie par :	(Aucune procédure établie)

En ce qui a trait au nombre d'élèves donnant *droit à l'instruction*, on constate notamment que trois provinces, soit l'Ontario, le Québec et le Nouveau-Brunswick, estiment qu'un seul élève qualifié justifie l'instruction dans la langue de la minorité. Cependant, les critères d'admissibilité en vigueur dans ces provinces ne correspondent pas dans tous les cas à ceux énoncés à l'article 23.

Ainsi, seule l'Ontario applique intégralement les trois critères désignés par l'article 23, à savoir celui défini par l'alinéa (1a), fondé sur la langue maternelle d'un parent; celui défini par l'alinéa (1b), fondé sur la langue de l'instruction reçue au primaire au Canada par un parent; ainsi que celui défini par le paragraphe (2), fondé sur la langue de l'enseignement primaire ou secondaire reçu au Canada par un frère ou une sœur. Tout enfant répondant à l'un ou l'autre de ces critères peut avoir accès à l'instruction en français. Il suffit que les parents en fassent la demande à la commission scolaire de leur district qui fournira ou achètera d'une autre commission scolaire le service demandé, soit l'instruction en français. En fait, l'Ontario est la seule province à reconnaître formellement et sans exception tous les ayants droit à l'instruction en français.

<p><i>Saskatchewan</i></p> <p>Droit en cause : Demande considérée : Nombre d'élèves requis : Requérants autorisés : Autorité désignée : Procédure établie par :</p> <p>Instruction Obtenir une classe au programme cadre de français 15 élèves par groupe pour trois années consécutives Comité consultatif, parents ou commission scolaire Lieutenant-gouverneur en conseil sur recommandation du ministre de l'Éducation <i>Loi sur l'éducation de la Saskatchewan</i> (1978)</p>	<p><i>Manitoba</i></p> <p>Droit en cause : Demande considérée : Nombre d'élèves requis : Requérants autorisés : Autorité désignée : Procédure établie par :</p> <p>Instruction Obtenir une classe 23 élèves Parents résidents d'un district scolaire Commission scolaire majoritaire <i>Loi sur l'éducation du Manitoba</i> (1980)</p>	<p><i>Ontario</i></p> <p>1. Droit en cause : Demande considérée : Nombre d'élèves requis : Requérants autorisés : Autorité désignée : Procédure établie par :</p> <p>Instruction Obtenir l'enseignement dans la langue de la minorité Un Parents résidents d'un district scolaire Commission scolaire <i>Loi sur l'éducation de l'Ontario</i> (1986)</p>	<p><i>Ontario</i></p> <p>2. Droit en cause : Demande considérée : Nombre d'élèves requis : Requérants autorisés : Autorité désignée : Procédure établie par :</p> <p>Gestion Comité consultatif lorsque la commission scolaire achète les services d'une autre commission scolaire 10 ou plus Contribuables d'un district scolaire Commission scolaire majoritaire <i>Loi sur l'éducation de l'Ontario</i> (1986)</p>	<p><i>Québec</i></p> <p>Droit en cause : Demande considérée : Nombre d'élèves requis : Requérants autorisés : Autorité désignée : Procédure établie par :</p> <p>Instruction Obtenir l'enseignement dans la langue de la minorité Un élève dont un parent ou un frère ou une sœur a reçu ou reçoit son instruction primaire en anglais au Canada Parent Commission scolaire <i>Charte de la langue française</i> du Québec (1978)</p>	<p><i>Nouveau-Brunswick</i></p> <p>Droit en cause : Demande : Nombre requis : Requérants autorisés : Autorité autorisée : Procédure établie par :</p> <p>Gestion Conseil scolaire minoritaire 30 élèves par classe, à l'élémentaire Parents résidents d'un district scolaire Ministère de l'Éducation <i>Loi sur l'éducation</i> du Nouveau-Brunswick (1981)</p>
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« française et autre » ou encore « française, anglaise et autre » (276 611 moins 271 914). Pour cette minorité, l'écart déterminant est révélé par les déclarations de langue maternelle double « française et anglaise ».

C. CONTEXTE SYSTÉMIQUE

Nous complétons cet aperçu d'abord par un résumé des conditions régissant dans chaque province et territoire l'application de l'article 23. Ce résumé est suivi d'une description sommaire du système de gestion mis en place pour permettre l'application de l'article 23 dans les provinces et les territoires.

1. Conditions d'exercice des droits de l'article 23

Le tableau II-9 résume les conditions établies par les autorités provinciales et territoriales pour assurer l'application de l'article 23 en 1989. Dans chaque cas, le tableau mentionne :

- le droit en cause, à savoir si ce droit touche l'accès à l'instruction en tant que telle ou bien la participation à la gestion scolaire;
- le genre de demande considérée, par exemple l'obtention d'une classe, d'un programme cadre ou d'une école;
- le nombre d'élèves requis pour valider la demande;
- les requérants autorisés à formuler la demande;
- l'autorité désignée habilitée à évaluer la demande;
- le document légal établissant les procédures.

Pour l'Ontario, trois types de droits sont invoqués : le droit à l'instruction et le droit à la gestion dans deux contextes différents (les comités consultatifs et les « sections » de langue minoritaire).

Tableau II-9

Résumé des conditions d'exercice des droits conférés par l'article 23, par province et territoire

<i>Colombie-Britannique</i>	<i>Alberta</i>
Droit en cause :	Droit en cause :
Demande considérée :	Demande considérée :
Nombre d'élèves requis :	Nombre d'élèves requis :
Requérants autorisés :	Requérants autorisés :
Autorité désignée :	Autorité désignée :
Procédure établie par :	Procédure établie par :
Instruction	Instruction
Obtenir une classe au programme cadre de français	Obtenir une classe ou une école
10 élèves au primaire, 15 élèves au secondaire	À la discrétion des commissions scolaires
Parents résidents d'un district scolaire	À la discrétion des commissions scolaires
Commission scolaire majoritaire	Commission scolaire majoritaire
Politique du ministère de l'Éducation (1987)	Politique du ministère de l'Éducation (1988)

Tableau II-8

Clientèle admissible en vertu de l'alinéa 23(1), selon la langue maternelle, 1986

	L.M. unique*	L.M. unique et double**	L.M. unique, double/triple***
Colombie-Britannique	12 627	14 815	15 484
Alberta	17 800	21 093	21 712
Saskatchewan	9 351	10 722	10 908
Manitoba	15 182	17 754	18 027
Ontario	114 883	135 612	138 328
Québec	98 555	121 513	130 615
Nouveau-Brunswick	52 686	57 331	57 398
Ile-du-Prince-Edouard	1 947	2 280	2 280
Nouvelle-Ecosse	8 517	10 516	10 631
Terre-Neuve	856	1 117	1 140
Territoires du Nord-Ouest et Yukon	584	674	703
Total : Minorités	234 433	271 914	276 611
• de langue française			
• de langue anglaise	98 555	121 513	130 615

Sources :

- * Clientèle établie d'après le nombre d'enfants de 6 à 17 ans dont un parent est la langue maternelle
- minoritaire (français ou anglais au Québec).
- ** Clientèle établie d'après le nombre d'enfants de 6 à 17 ans dont un parent est de langue maternelle minoritaire, langue unique (français ou anglais au Québec) ou double (français et anglais).
- *** Clientèle établie d'après le nombre d'enfants de 6 à 17 ans dont un parent est de langue maternelle minoritaire, langue unique (français ou anglais au Québec) ou double (français et anglais, français et autre ou anglais et autre au Québec) ou triple.

De fait, c'est la clientèle du Québec, admissible en vertu de l'alinéa 23(1)a) si cet alinéa y était en vigueur, qui serait le plus directement touchée par le choix de la définition de la langue maternelle. En effet, 22 958 enfants (18,9 p. 100) sont d'un parent ayant déclaré une double langue maternelle française et anglaise (121 513 moins 98 555); 9 102 autres enfants (7 p. 100) sont d'un parent de langue maternelle « anglaise et autre » ou encore « française, anglaise et autre » (130 615 moins 121 513). Le choix méthodologique de la définition de la langue maternelle induit donc un écart considérable de 32 060 enfants.

Quant à la minorité de langue française, 37 481 enfants (13,8 p. 100) sont d'un parent ayant déclaré une double langue maternelle française et anglaise (271 914 moins 234 433). Mais seulement 4 697 autres enfants (1,7 p. 100) sont d'un parent de langue maternelle

— au Manitoba et en Nouvelle-Écosse, l'équivalent du tiers des ayants droit en vertu de l'alinéa 23(1a) est de langue maternelle française (unique et double, française et anglaise), soit 37,6 p. 100 et 36,1 p. 100, respectivement;

— en Alberta, dans les Territoires du Nord-Ouest et au Yukon ainsi qu'à Terre-Neuve, l'équivalent d'un ayant droit sur quatre est de langue maternelle française;

— enfin, en Saskatchewan et en Colombie-Britannique, l'équivalent de moins d'un ayant droit sur cinq est de langue maternelle française.

Ces constatations révèlent tout d'abord des taux d'assimilation très élevés chez toutes les minorités francophones, à l'exception de celle du Nouveau-Brunswick. Cette dernière peut d'ailleurs servir de guide en ce qui concerne une offre de services qui desservent une bonne part des ayants droit en vertu de l'alinéa 23(1a).

Les données que nous avons étayées eu égard à la clientèle admissible en vertu de l'alinéa 23(1a) ont porté sur un choix méthodologique précis : celui de la langue maternelle unique et double (française et anglaise) d'un parent bénéficiaire. Nous complétons maintenant cette analyse. Au tableau II-8, nous présentons le nombre d'ayants droit³⁰ (de 6 à 17 ans) en regard des deux autres définitions de la langue maternelle. La première est la plus minimale : elle ne contient que les ayants droit (de 6 à 17 ans) dont un parent est de langue maternelle unique (française ou anglaise) de la minorité. La deuxième représente la clientèle maximale en vertu de l'alinéa 23(1a) : elle regroupe tous les enfants d'âge scolaire (de 6 à 17 ans) dont un parent s'est déclaré de langue maternelle de la minorité, qu'elle soit unique, double ou encore triple. La colonne portant sur les déclarations de langue maternelle unique et double récapitule la position médiane que nous avons adoptée antérieurement.

Tableau II-7
Population de langue maternelle de la minorité, par rapport à la clientèle admissible en vertu de l'alinéa 23(1)a) par province et territoire, 1986

	Population L.M.M. de 6 à 17 ans	Clientèle admissible	L.M.M./C.A.* (en %)
Colombie-Britannique	2 602	14 815	17,6
Alberta	5 318	21 093	25,2
Saskatchewan	1 762	10 722	16,4
Manitoba	6 681	17 754	37,6
Ontario	70 462	135 612	52,0
Québec	86 946	121 513	71,6
Nouveau-Brunswick	46 350	57 331	80,9
Ile-du-Prince-Édouard	706	2 280	31,0
Nouvelle-Écosse	3 791	10 516	36,1
Terre-Neuve	267	1 117	23,9
Territoires du Nord-Ouest et Yukon	168	674	24,9
Total : Minorités	138 107	271 914	50,8
• de langue française	86 946	121 513	71,6

* Nombre d'enfants de langue maternelle minoritaire (L.M.M.) par rapport à la clientèle admissible (C.A.) en vertu de l'alinéa 23(1) a).
Sources et légendes :
Voir le tableau II-5.

Voici les constatations qui se dégagent de ce tableau :

— au Nouveau-Brunswick, l'équivalent de 80,9 p. 100 des enfants d'âge scolaire (6 à 17 ans) admissibles en vertu de l'alinéa 23(1)a) est de langue maternelle française (unique et double, française et anglaise);

— au Québec, l'équivalent²⁹ de 71,6 p. 100 des enfants qui seraient admissibles en vertu de l'alinéa 23(1)a) est de langue maternelle anglaise (unique et double, française et anglaise);

— en Ontario, l'équivalent de la moitié des ayants droit déterminés par l'alinéa 23(1)a) est de langue maternelle française (unique et double, française et anglaise);

— au Nouveau-Brunswick, l'équivalent de 76,3 p. 100 de la population d'âge scolaire admissible en vertu de l'alinéa 23(1)a) reçoit l'enseignement en français dans des écoles homogènes publiques;

— les écoles homogènes de l'Ontario desservent, pour leur part, une population étudiante équivalant à 53,5 p. 100 de la population d'âge scolaire admissible en vertu de l'alinéa 23(1)a);

— l'équivalent d'un ayant droit sur cinq étudie dans des écoles homogènes françaises à l'Île-du-Prince-Édouard (21,8 p. 100), en Nouvelle-Écosse (18,6 p. 100) et au Manitoba (18,2 p. 100);

— dans les quatre autres provinces, soit à Terre-Neuve, en Saskatchewan, en Colombie-Britannique et en Alberta, de même que dans les Territoires du Nord-Ouest et au Yukon, l'équivalent de moins de 5 p. 100 de la population d'âge scolaire (de 6 à 17 ans) admissible en vertu de l'alinéa 23(1)a) de la *Charte* reçoit l'instruction en français au sein d'écoles homogènes.

En général, au Canada, la clientèle admissible en vertu de l'alinéa 23(1)a) de la *Charte* se chiffre à 271 914 pour la minorité de langue française en 1986. Cependant, 123 027 enfants sont inscrits dans des écoles homogènes, soit l'équivalent de 45,2 p. 100 des ayants droit. Quant à la minorité de langue anglaise du Québec, l'équivalent de 81,6 p. 100 (99 190) de la clientèle qui serait admissible en vertu de l'alinéa 23(1)a), ou 121 513, est inscrit dans des écoles homogènes de langue anglaise du secteur public des commissions scolaires. Rappelons que cette disposition constitutionnelle ne s'y applique pas. Toutefois, comme nous l'avons constaté, les effectifs calculés selon les critères en vigueur sont inférieurs aux nombres calculés en fonction du critère énoncé à l'alinéa 23(1)a). Dans le cas du Québec, les effectifs du secteur privé présentent cette question sous un autre éclairage. La section portant sur cette province en précise la nature.

Au tableau II-7, nous avons comparé la population des enfants de 6 à 17 ans de langue maternelle de la minorité à celle de la clientèle admissible en vertu de l'alinéa 23(1)a). Ceci permet de mieux évaluer l'ampleur minimale que peut prendre la demande de services aux minorités de langue officielle et de la situer dans le contexte de l'objectif principal de l'article 23, soit l'épanouissement des minorités de langue officielle.

Nouvelle-Ecosse, les Territoires du Nord-Ouest et le Yukon, la Saskatchewan, la Colombie-Britannique et Terre-Neuve) n'ont pas encore d'école secondaire homogène au sein des commissions scolaires.

Au Québec, en 1986, la minorité anglophone dispose de 308 écoles homogènes, soit 82,4 p. 100, sur un total de 374 écoles publiques établies par les commissions scolaires (tableau II-5) qui dispensent un enseignement en anglais. Les écoles homogènes comptent 99 190 des 111 178 élèves étudiant en anglais. Nous constatons donc qu'une grande proportion des effectifs de la minorité anglophone étudie dans des écoles homogènes (89,2 p. 100).

Quand on examine, pour chaque province et territoire, les effectifs étudiants dans les écoles homogènes des commissions scolaires par rapport à la population minoritaire de langue maternelle (unique et double, française et anglaise) d'âge scolaire (de 6 à 17 ans), on peut tirer les constatations suivantes :

— au Québec, en 1986, l'équivalent de 114,1 p. 100 de la population de langue maternelle anglaise d'âge scolaire reçoit l'enseignement dans cette langue au sein d'écoles homogènes anglaises des commissions scolaires;

— en Ontario, l'équivalent de 103 p. 100 de la population de langue maternelle française d'âge scolaire reçoit l'enseignement dans cette langue au sein d'écoles homogènes;

— au Nouveau-Brunswick et à l'Île-du-Prince-Édouard, l'équivalent de 94,4 p. 100 et de 70,4 p. 100, respectivement, de la population franco-phonie d'âge scolaire étudie au sein d'écoles homogènes;

— en Nouvelle-Ecosse et au Manitoba, l'équivalent de la moitié de la population francophone d'âge scolaire étudie dans des écoles homogènes, soit 51,7 p. 100 et 48,3 p. 100, respectivement;

— dans les quatre autres provinces, soit en Colombie-Britannique, en Saskatchewan, en Alberta et à Terre-Neuve, ainsi que dans les Territoires du Nord-Ouest et au Yukon, l'enseignement en français au sein d'écoles homogènes équivaut à moins de 15 p. 100 de la population francophone d'âge scolaire.

Voyons maintenant l'écart entre les effectifs scolaires des minorités dans les écoles homogènes des commissions scolaires en 1986 et la population des ayants droit telle que nous l'avons calculée en vertu de l'alinéa 23(1a) de la *Charte canadienne des droits et libertés*. Cette analyse mène aux constatations suivantes :

— au Québec, l'équivalent de 81,6 p. 100 des enfants admissibles en vertu de l'alinéa 23(1a) étudierait dans des écoles homogènes anglaises des commissions scolaires, si cette disposition s'appliquait dans cette province;

Tableau II-6

Écoles publiques primaires et secondaires homogènes, par province et territoire, 1986

Écoles homogènes	Effectifs (1 ^{re} à 12 ^e année)	Population minoritaire (de 6 à 17 ans)	Effectifs L.M.M. (en %)	Clientèle admissible	Effectifs C.A. (en %)
Colombie-Britannique	2	357	2 602	13,7	14 815
Alberta	2	526	5 318	9,9	21 093
Saskatchewan	3	166	1 762	9,4	10 722
Manitoba	15	3 230	6 681	48,3	17 754
Ontario	313	72 555	70 462	103,0	135 612
Québec*	308	99 190	86 946	114,1	121 513
Nouveau-Brunswick	150	43 737	46 350	94,4	57 331
Île-du-Prince-Édouard	2	497	706	70,4	2 280
Nouvelle-Écosse	12	1 959	3 791	51,7	10 516
Terre-Neuve	0	0	267	0	1 117
Territoires du Nord-Ouest et Yukon	0	0	168	0	674
Total : Minorités	499	123 027	138 107	89,1	271 914
* de langue française	308	99 190	86 946	114,1	121 513
* de langue anglaise	191	23 837	51 161	0	150 401

* Écoles françaises et anglaises.
Sources et légendes :

Voir le tableau II-5.

En 1986, l'ensemble des minorités francophones dispose de 499 écoles homogènes publiques établies par les commissions scolaires, soit 79,2 p. 100 des 630 écoles (tableau II-5) qui leur dispensent l'instruction en français. L'Ontario arrive en tête avec 313 écoles homogènes publiques (62,7 p. 100) qui, en principe, sont réservées aux francophones, suivie du Nouveau-Brunswick avec 150 écoles de ce type (30 p. 100).

Les effectifs des écoles homogènes des commissions scolaires réservées aux minorités francophones au Canada totalisent 123 027 élèves sur 136 903 élèves (tableau II-5) au sein des écoles publiques de toutes catégories dispensant l'enseignement en français aux minorités francophones. Au Nouveau-Brunswick et en Ontario, une bonne part des effectifs francophones étudie dans des écoles homogènes. Cependant, dans les autres provinces, le nombre de ces écoles est parfois négligeable. En Colombie-Britannique, en Alberta, en Saskatchewan, à Terre-Neuve ou encore à l'Île-du-Prince-Édouard, deux ou trois écoles sont appelées à desservir le territoire entier de la province. En 1986, cinq provinces (la

de la moitié des ayants droit en vertu de l'alinéa 23(1)a) selon le calcul que nous en avons fait.

Quant à la minorité anglophone du Québec, les effectifs calculés dans les commissions scolaires, selon les critères d'admissibilité énoncés à l'alinéa 23(1)b) et au paragraphe 23(2), *Charte*. En effet, l'équivalent de 91,5 p. 100 des enfants d'âge scolaire qui seraient admissibles en vertu de l'alinéa 23(1)a), s'il s'y appliquait, est inscrit dans des programmes de la minorité dans les commissions scolaires. Dans la description du Québec présentée plus loin, nous soulignons l'incidence sur ces données du réseau d'écoles privées subventionnées de langue anglaise de cette province.

L'écart entre les effectifs dans les écoles dispensant l'instruction à la minorité de langue officielle et la clientèle admissible en vertu de l'alinéa 23(1)a) dépend de plusieurs facteurs. Des facteurs historiques d'abord, comme nous l'avons vu dans la première section de l'aperçu. Des facteurs démographiques également : le bassin de population de la minorité, les taux d'exogamie, l'exercice du libre choix de la langue d'instruction, etc. Mais surtout dans les provinces et les territoires aux regroupements intermédiaires et moindres, soit les Territoires du Nord-Ouest et le Yukon, l'Alberta, la Saskatchewan, la Colombie-Britannique et Terre-Neuve, cet écart peut dépendre également de facteurs tels que l'accès à des services éducatifs de qualité dans la langue de la minorité, l'accès à des écoles homogènes de la minorité et le contrôle de la gestion scolaire par les membres de la minorité. L'étude n'a cependant pas pour objet de déterminer de façon précise l'importance relative de ces facteurs. Nos données et notre analyse nous permettent seulement de constater l'évolution actuelle de ces écarts.

Examinons maintenant le tableau II-6 qui a pour but de réévaluer toutes les variables précédentes en fonction spécifiquement des écoles homogènes dont disposent les minorités de langue officielle dans le secteur des commissions scolaires. L'alinéa 23(3)b) traite formellement de ce type d'écoles lorsqu'il fait état des « établissements de la minorité »²⁷. Notre étude de la situation des minorités de langue officielle eu égard aux droits conférés par l'article 23 de la *Charte* se penche donc sur ce deuxième volet des services d'instruction.

Dans ces écoles, comme nous l'avons déjà signalé au Chapitre premier, la langue d'enseignement et de l'administration est la langue de la minorité officielle et les élèves appartiennent pour la plupart au groupe minoritaire. La langue de la majorité linguistique y est apprise comme langue seconde. Selon les objectifs de l'article 23, elles constituent le type d'écoles le mieux en mesure de combler les besoins éducatifs des minorités et d'assurer la préservation de leur culture et de leur langue.

Notons que la méthodologie utilisée pour établir les autres variables du tableau II-6 demeure la même que celle utilisée au tableau II-5. Les trois mises en garde faites antérieurement valent également²⁸.

intermédiaire²⁵ ou moindre, l'équivalent de la moitié ou moins des enfants dont la langue maternelle est le français étudié dans cette langue. Il s'agit de la Colombie-Britannique, de l'Alberta, de la Saskatchewan, des Territoires du Nord-Ouest et du Yukon.

Quant à la population anglophone du Québec, l'équivalent d'une proportion supérieure aux enfants de langue maternelle anglaise (127,9 p. 100) étudié en anglais en 1986. Alors que 86 946 enfants sont de langue maternelle anglaise, (unique et double, française et anglaise), les effectifs dans les programmes de la minorité des commissions scolaires totalisent 111 178 élèves²⁶.

Par ailleurs, en reportant la variable des effectifs (colonne « b ») sur celle de la clientèle admissible en vertu de l'alinéa 23(1)a) (colonne « e ») pour obtenir la colonne « f », on constate, de façon générale, un écart plus ou moins grand entre les effectifs scolaires réels dans les programmes d'enseignement des minorités des commissions scolaires et les ayants droit en vertu des critères de l'alinéa 23(1)a) :

- au Québec, l'équivalent de 91,5 p. 100 de la clientèle d'âge scolaire admissible selon l'alinéa 23(1)a) étudierait, si cette disposition s'appliquait à la province, dans la langue de la minorité officielle dans les programmes des commissions scolaires;
- au Nouveau-Brunswick, les effectifs de l'enseignement à la minorité dans les commissions scolaires représentent l'équivalent de 80,4 p. 100 de la clientèle admissible en vertu de l'alinéa 23(1)a);
- en Ontario, l'équivalent de 57,1 p. 100 des enfants d'âge scolaire admissibles en vertu de l'alinéa 23(1)a) étudie dans des programmes destinés à la minorité de langue française dans le secteur public;
- en Nouvelle-Écosse, au Manitoba et à l'Île-du-Prince-Édouard, l'équivalent du tiers des enfants admissibles en vertu de l'alinéa 23(1)a) étudie dans des programmes destinés à la minorité de langue française dans les commissions scolaires;
- en Colombie-Britannique, en Alberta, en Saskatchewan, à Terre-Neuve, dans les Territoires du Nord-Ouest et au Yukon, l'équivalent de 10 p. 100 ou moins des ayants droit en vertu de l'alinéa 23(1)a) étudie en français;
- en général, dans huit provinces et territoires, l'équivalent de moins de la moitié des ayants droit en vertu de l'alinéa 23(1)a) étudie dans des programmes de la langue de la minorité dans le secteur public.

Au Canada donc, la clientèle d'âge scolaire de la minorité de langue française admissible en vertu de l'alinéa 23(1)a) se chiffre à 271 914 enfants. Or, au total, 136 903 élèves sont inscrits dans des programmes d'enseignement à la minorité dans le secteur des commissions scolaires, soit l'équivalent de 50,3 p. 100 de la clientèle admissible. De ces enfants admissibles, 138 107 sont de langue maternelle française. Le nombre d'enfants inscrits aux programmes de la minorité française est l'équivalent de 99,1 p. 100 des enfants de 6 à 17 ans dont la langue maternelle est celle de la minorité, mais représente l'équivalent

Il va sans dire qu'en pratique, une certaine proportion des parents titulaires des droits conférés par l'article 23 préféreront inscrire leurs enfants dans les écoles destinées aux enfants de la majorité linguistique. Même s'ils avaient accès à des services destinés à la minorité linguistique, ces parents pourraient décider de ne pas y inscrire leurs enfants. Il s'agit là d'un choix personnel et familial.

Voici donc les principales constatations qui se dégagent du tableau II-5 tout en tenant compte des trois mises en garde faites antérieurement. Premièrement, sur le plan méthodologique, nos données sont prudentes et conservatrices : 1) les effectifs comparabilisés ne sont pas exclusivement constitués d'ayants droit²² et 2) le critère de la langue maternelle repose sur les seules déclarations uniques et doubles (français et anglais)²³. Deuxièmement, puisque l'article 23 de la *Charte* a créé une situation nouvelle qui a fait évoluer les choses, la demande réelle pour des services scolaires aux minorités de langue officielle peut se situer au delà de l'offre réelle de ces services. Troisièmement, en vertu de leur libre choix, les parents bénéficiaires des droits conférés par l'article 23 de la *Charte* peuvent décider d'inscrire leur(s) enfant(s) aux programmes destinés aux enfants de la majorité linguistique.

En étudiant le pourcentage des effectifs dans les programmes d'enseignement de la minorité dans les commissions scolaires (variable « b ») par rapport à la population d'âge scolaire (de 6 à 17 ans) dont la langue maternelle est la langue de la minorité (variable « c »), on constate à la colonne « d » que :

- en 1986, l'équivalent de 127,9 p. 100 des enfants de 6 à 17 ans de langue maternelle anglaise étudie dans des programmes d'enseignement de la minorité des commissions scolaires au Québec;
- en Ontario, l'équivalent de 109,9 p. 100 des enfants de langue maternelle française de 6 à 17 ans étudie dans des programmes d'enseignement de la minorité des commissions scolaires;
- au Nouveau-Brunswick²⁴ et en Nouvelle-Écosse, l'équivalent de la quasi-totalité de la population minoritaire de langue maternelle française d'âge scolaire est inscrit dans des programmes de la minorité des commissions scolaires, soit 99,4 et 96,4 p. 100, respectivement;
- Par contre, en Alberta, à Terre-Neuve, dans les Territoires du Nord-Ouest et au Yukon, l'équivalent d'un enfant sur quatre dont la langue maternelle est le français reçoit l'instruction dans sa langue maternelle dans des programmes d'enseignement des commissions scolaires.

Pour l'ensemble des minorités francophones, l'équivalent de 99,1 p. 100 des enfants dont la langue maternelle est celle de la minorité étudie dans des programmes d'enseignement de la minorité des commissions scolaires. En effet, alors que Statistique Canada a dénombré 138 107 enfants de langue maternelle française à l'extérieur du Québec, langue maternelle unique (français) et double (français et anglais), les effectifs dans les programmes de la minorité de ce secteur comptent 136 903 élèves en 1986. Cette constatation doit être nuancée. Dans les provinces où la population de la minorité française constitue un regroupement

nous permettront de comparer les inscriptions actuelles, permises par les deux critères en vigueur, au regard de l'alinéa 23(1)a).

Pourcentage des effectifs scolaires des programmes de la minorité par rapport à la clientèle admissible en vertu de l'alinéa 23(1)a

Ainsi, la deuxième variable (colonne « b ») est rapportée à la quatrième variable (colonne « e »), de manière à obtenir, à la colonne « f » du tableau, le pourcentage des effectifs scolaires des programmes d'enseignement destinés à la minorité en 1986 par rapport à l'ensemble de la clientèle admissible en vertu de l'alinéa 23(1)a). Ce calcul fournit une mesure de l'écart entre le nombre d'élèves qui bénéficiaient dans les faits, en 1986, d'une éducation dans la langue de la minorité, et l'ensemble des ayants droit tels que désignés dans l'alinéa 23(1)a). Rappelons cependant que le pourcentage ainsi établi constitue un maximum dans la mesure où les effectifs étudiants sont supérieurs au nombre réel d'ayants droit inclus dans ces effectifs²⁰.

Cette évaluation sera en outre utile pour chaque province et territoire, indépendamment de l'interprétation du « nombre suffisant » par les tribunaux. Comme nous l'avons vu au Chapitre premier, certains tribunaux estiment en effet que ce nombre doit être établi en fonction de la demande réelle de services scolaires. D'autres soutiennent que ce nombre doit d'emblée tenir compte de la demande éventuelle dans le cas de l'application intégrale des articles de la *Charte* relatifs à l'instruction aux minorités de langue officielle. Quelle que soit l'interprétation retenue²¹, il importe de connaître les besoins éventuels des minorités de langue officielle dans le secteur de l'éducation et, le cas échéant, de répondre réellement à ces besoins. Connaissant la clientèle éventuelle, les divers partenaires en cause, les populations minoritaires, les gouvernements provinciaux et territoriaux ainsi que le grand public auront une idée plus précise de l'ampleur des besoins à combler et pourront choisir les moyens les plus efficaces pour y satisfaire. D'autres études devraient tenter d'évaluer pour chaque province et territoire dans quelle mesure il est réaliste de croire que les effectifs d'enseignement dans la langue de la minorité peuvent se rapprocher de la clientèle admissible en vertu de l'alinéa 23(1)a).

Il convient également de garder à l'esprit que les données relatives aux effectifs scolaires se situent dans plusieurs provinces et territoires en deçà de la demande réelle de services scolaires. Cette demande existe et se manifeste, notamment, par l'intermédiaire des associations de parents au sein des minorités ou encore par l'entremise des tribunaux. Toutefois, nous ne prétendons pas que les gouvernements provinciaux et territoriaux empêchent sciemment les minorités de s'inscrire à ces services. Au contraire, il s'agit plutôt d'une évolution qui fait suite à de nouvelles dispositions constitutionnelles. La situation sera bien sûr améliorée lorsque les minorités de langue officielle pourront librement choisir d'inscrire leurs enfants dans des programmes qui leur sont destinés parce que des services scolaires de qualité leur seront offerts. Il faudra également que la qualité de ces services soit équivalente à celle des services dispensés à la majorité, sans quoi plusieurs parents de la minorité préféreront inscrire leurs enfants dans les écoles dispensant l'enseignement dans la langue de la majorité.

Puisque la compilation spéciale de Statistique Canada comportait exclusivement les cellules « familles », nous les avons ajustées de manière à tenir compte des familles monoparentales. Le nombre de ces dernières a été jugé proportionnel à celui de la majorité de la province ou du territoire de résidence, soit 15 p. 100 en moyenne (Paillet, 1990).

En ce qui concerne le critère de la langue maternelle, nous avons choisi, rappelons-le, de présenter principalement le nombre d'ayants droit constituant la clientèle admissible selon la langue maternelle unique (française ou anglaise) et la langue maternelle double (française et anglaise). Ce choix détermine un nombre qui aurait toutefois été moindre si nous n'avions retenu que l'unique langue maternelle de la minorité. Par contre, le nombre des ayants droit aurait été supérieur si nous avions retenu toutes les déclarations de langue maternelle de la minorité, qu'elles soient uniques, doubles ou triples. Faisant suite à notre analyse, nous présentons au tableau II-8 les données portant sur ces deux autres choix de langue maternelle.

Soulignons encore que ces données sur les ayants droit ne tiennent pas compte de l'ensemble des ayants droit aux termes de l'article 23 de la *Charte canadienne des droits et libertés* eu égard aux droits scolaires pour les minorités de langue officielle. En effet, nous ne disposons pas des données qui auraient permis d'établir avec précision les ayants droit en vertu de l'alinéa 23(1)b), soit les enfants dont un parent a reçu au Canada son instruction primaire dans la langue de la minorité. Nous ne disposons pas non plus des données qui auraient permis d'établir les ayants droit en vertu du paragraphe 23(2), soit ceux dont un frère ou une sœur a reçu ou reçoit son instruction primaire ou secondaire dans la langue de la minorité. Nos données présentent donc un aperçu conservateur du besoin qui reste théoriquement à combler au Canada au chapitre de l'accessibilité à l'enseignement pour les minorités de langue officielle. Les clientèles visées par l'alinéa 23(1)a) constituent néanmoins la grande majorité de la population visée par la *Charte* du point de vue des droits scolaires pour les minorités de langue officielle, de sorte que nos données permettent de dresser un portrait assez réaliste de la situation.

Nos données présentent également le nombre d'enfants au Québec qui sont visés par l'alinéa 23(1)a), même si cette province y est sous-représentée en vertu du droit d'en différer la promulgation que lui réserve l'article 59(2) de la *Charte canadienne des droits et libertés*¹⁹. Le gouvernement québécois a estimé en effet que la *Charte* compromettrait à ce chapitre sa propre législation en matière linguistique. Au Québec, l'accessibilité à l'enseignement en anglais est donc déterminée par les dispositions de la *Charte de la langue française*. En ce qui a trait à la *Charte canadienne des droits et libertés*, l'alinéa 23(1)b) et le paragraphe 23(2) sont en vigueur. Les critères d'admissibilité dépendent par conséquent de la langue dans laquelle les parents, les frères ou les sœurs ont reçu (ou reçoivent) leur instruction, et non pas de la langue maternelle des parents.

Cet exercice a pour but d'évaluer, indépendamment des variantes provinciales, la demande de services scolaires à fournir éventuellement aux minorités en vertu de l'application intégrale de l'alinéa 23(1)a). Nous présentons également les données sur le Québec qui

Le pourcentage des effectifs de la minorité par rapport à la population provinciale d'âge scolaire (de 6 à 17 ans) de langue maternelle de la minorité

En rapportant la deuxième variable à la troisième, on obtient à la colonne « d » du tableau le pourcentage des effectifs de la minorité par rapport à la population provinciale d'âge scolaire (de 6 à 17 ans) dont la langue maternelle est celle de la minorité. Ce calcul permet de mesurer l'écart entre le nombre d'élèves de la minorité qui bénéficient en 1986 d'une éducation dans leur langue maternelle et l'ensemble de la population minoritaire d'âge scolaire qui devrait pouvoir en bénéficier, puisqu'en plus d'y avoir droit, elle est déjà de la langue maternelle de la minorité.

Toutefois, ces pourcentages sont des indicateurs maximaux dans la mesure où le nombre d'enfants inscrits dépasse légèrement, à l'occasion, la tranche d'âge de 6 à 17 ans. En effet, les études primaires et secondaires peuvent parfois regrouper des enfants de 4 ou 5 ans ou encore de 18 ans, selon les programmes provinciaux ou en raison de circonstances particulières. Ces élèves sont inclus dans les inscriptions, mais exclus en vertu de la tranche d'âge choisie dans notre méthodologie. Ainsi, les pourcentages des inscriptions par rapport au nombre d'enfants dont la langue maternelle est celle de la minorité seraient quelque peu inférieurs si le nombre d'enfants de 4 ou 5 ans ou encore de 18 ans inscrits en était exclu.

Par ailleurs, les pourcentages des effectifs par rapport à la population de langue maternelle minoritaire sont des indicateurs minimaux dans la mesure où certains élèves quittent l'école lorsqu'ils ont passé l'âge obligatoire¹⁷. Ainsi, entre 16 et 17 ans, les effectifs scolaires sont en réalité inférieurs au nombre d'adolescents de cet âge calculé selon nos critères.

Ces deux facteurs, soit le décrochage après l'âge scolaire obligatoire et l'inscription avant 6 ans ou après 17 ans, équilibreraient donc nos données¹⁸.

Clientèle admissible en vertu de l'alinéa 23(1)a)

Une quatrième variable est considérée dans la colonne « e » du tableau : la clientèle admissible en vertu de l'alinéa 23(1)a). Cette clientèle comprend tous les enfants de 6 à 17 ans dont au moins un des deux parents a pour langue maternelle la langue de la *Charte*, une À l'aide de cette variable, nous établirons ici, au regard des exigences de la *Charte*, une estimation de la demande éventuelle de services éducatifs pour les minorités dans chaque province et territoire.

Les critères retenus dans les données statistiques, utilisées à la colonne « e » du tableau II-5 pour déterminer les ayants droit en vertu de l'alinéa 23(1)a), sont les suivants :

- les enfants des cellules « familles » de 6 à 17 ans inclusivement, et
- dont au moins un des parents est de citoyenneté canadienne, et
- dont la langue maternelle d'au moins un des parents est la langue de la minorité (langue maternelle unique ou double langue maternelle française et anglaise).

Les effectifs étudiants dans ces écoles

Les statistiques des effectifs scolaires des écoles dispensant l'instruction à la minorité dans les établissements publics sont tirées principalement des rapports annuels ou documents des ministères de l'Éducation des provinces et des territoires. Ces données ont fait l'objet d'une vérification à partir des données de Statistique Canada, de celles du Conseil des ministres de l'Éducation (1989) et de celles des organismes représentant les minorités de langue officielle¹⁵.

Afin de permettre une comparaison avec l'ensemble du Canada, une attention particulière a été apportée à l'uniformisation des données relatives aux effectifs scolaires. Nous avons voulu ainsi comparer la situation des provinces et des territoires en fonction d'une même période de douze années scolaires (élèves de 6 à 17 ans), période recoupant généralement les années de scolarité du primaire et du secondaire dont l'article 23 de la *Charte* fait formellement état. Puisque, au Québec, contrairement aux autres provinces et territoires, le primaire et le secondaire totalisent onze années scolaires et non douze (ou plus en Ontario), nous avons inclus dans les effectifs scolaires anglophones ceux de la maternelle pour obtenir ces douze années d'étude¹⁶.

Quant aux élèves constituant les effectifs de la minorité de langue officielle française de chaque province et territoire, ce ne sont pas nécessairement des ayants droit en vertu de l'article 23 de la *Charte*. En effet, des élèves de la majorité qui ne seraient pas admissibles en vertu de l'article 23 sont souvent admis aux programmes de la minorité. Nos données ne nous permettent pas d'en indiquer les proportions exactes puisque le nombre de ces non-ayants droit inscrits varie d'une province, d'une région ou d'une école à l'autre, selon que les autorités compétentes décident ou non d'adhérer aux critères énoncés à l'article 23 lors de l'admission des élèves à ces programmes. Par conséquent, les effectifs sont plus nombreux : le nombre d'élèves à la fois inscrits et admissibles en vertu de l'article 23 est en réalité inférieur au nombre comptabilisé dans les effectifs de la minorité de langue française.

Quant aux effectifs de la minorité anglophone du Québec, ils sont fonction des critères d'admissibilité portant sur la langue d'instruction d'un parent ou d'un frère ou d'une sœur.

La population provinciale d'âge scolaire (de 6 à 17 ans) dont la langue maternelle est celle de la minorité

Une compilation de Statistique Canada effectuée spécialement aux fins de la présente recherche et analysée par un démographe (Paille, 1990) nous a permis d'établir, pour chaque province et territoire, la population âgée de 6 à 17 ans dont la langue maternelle est la langue de la minorité, tranche d'âge correspondant aux douze années scolaires que recoupe généralement le primaire et le secondaire. Ces données incluent les personnes qui, lors du recensement, déclarent être de langue maternelle (française et (ou) anglaise) unique ou double (française et anglaise).

*** De la maternelle au secondaire V inclusivement. L'alinéa 23(1)a ne s'applique pas actuellement au Québec; la clientèle scolaire admissible en vertu de l'article 23 de la *Charte* repose sur l'alinéa 23(1)b (enfants dont un des parents a reçu son instruction primaire dans la langue de la minorité au Canada) et le paragraphe 23(2) (enfants dont un frère ou une sœur reçoit ou a reçu son instruction primaire ou secondaire dans la langue de la minorité au Canada).

Sources :

- a Ministère de l'Éducation des provinces et des territoires. Inclut les écoles des commissions scolaires dispensant l'enseignement à la minorité : programmes dans les écoles de la majorité, écoles mixtes, bilingues ou homogènes.
- b Ministère de l'Éducation des provinces et Conseil des ministres de l'Éducation. *Rapport annuel 1989, 1^{re} à 12^e année* inclusivement ou l'équivalent.
- c Statistique Canada. 1986, compilation spéciale Tableau n° PO 3272, 17 novembre 1988. Population de langue maternelle minoritaire de 6 à 17 ans; inclut les *langues maternelles uniques* (français et anglais au Québec) et les *doublets* (anglais et français).
- d Pourcentage des *effectifs* dans les écoles dispensant l'instruction à la minorité par rapport à la population de langue maternelle minoritaire âgée de 6 à 17 ans.
- e *Clientèle d'âge scolaire* (de 6 à 17 ans) *admissible* en vertu de l'alinéa 23(1)a de la *Charte canadienne des droits et libertés* d'après une compilation spéciale de Statistique Canada, 1986, analysée par M. Paillet.
- f Pourcentage des *effectifs* en 1986 par rapport à la clientèle admissible en vertu de l'alinéa 23(1)a. Ce pourcentage peut être, en réalité, inférieur pour la minorité de langue française étant donné que les *effectifs* ne sont pas exclusivement constitués d'élèves admissibles en vertu de l'alinéa 23(1)a).

Le nombre d'écoles dispensant l'instruction aux minorités de langue officielle

Les données relatives au nombre d'écoles dispensant l'instruction aux minorités de langue officielle proviennent des ministères de l'Éducation des provinces et des territoires mentionnés. Les écoles répertoriées par les ministères, que nous avons retenues, appartiennent uniquement au secteur public, soit les commissions scolaires¹⁴, et peuvent être de quatre types :

— des écoles de la majorité linguistique où des *programmes spéciaux* ont été mis en œuvre, surtout au secondaire ou encore dans les régions éloignées, afin d'enrichir l'enseignement de la majorité et d'en adapter une partie aux besoins de la minorité;

— des *écoles bilingues* où l'enseignement à la minorité est défini en fonction du temps passé à enseigner dans la langue de la minorité. Les écoles bilingues favorisent un partage plus ou moins égal de l'enseignement en français et en anglais;

— des *écoles dites* « *mixtes* », c'est-à-dire où les *effectifs* ne sont pas seulement ceux de la minorité de langue officielle. Les élèves de la majorité et ceux de la minorité étudient sous un même toit et souvent sous une administration commune, mais les classes sont séparées. La terminologie diffère pour les désigner. Ce sont dans certaines provinces des écoles « à double voie » ou « à triple voie », ailleurs des écoles « partagées » où les classes de la minorité fréquentent soit des classes d'immersion ou encore des écoles anglaises ou françaises (au Québec);

— des *écoles homogènes* regroupant les *effectifs* de la minorité. Dans ces écoles, la langue d'enseignement et de l'administration est la langue de la minorité et les élèves appartiennent pour la plupart au groupe minoritaire.

La langue de la majorité est la langue seconde.

La variable « école » utilisée au tableau II-5 (colonne « a ») regroupe indistinctement tous ces types d'écoles.

Le tableau II-5, suivi d'une analyse et de précisions méthodologiques, offre une vue d'ensemble de la situation.

Dans un premier temps, ce tableau met en relation les trois variables suivantes pour chaque province ou territoire en 1986¹³ :

- le nombre d'écoles du secteur public dispensant l'instruction aux minorités de langue officielle (colonne « a » du tableau);
- les effectifs étudiants dans ces écoles publiques (colonne « b »);
- la population provinciale d'âge scolaire (de 6 à 17 ans) dont la langue maternelle est celle de la minorité (colonne « c »).

Ces variables permettent de sonder l'état de l'enseignement à la minorité en appliquant les paramètres établis par l'article 23 de la *Charte*. On y retrouve les éléments essentiels : les écoles, leurs effectifs et le nombre d'enfants d'âge scolaire de langue maternelle de la minorité. Voici des précisions méthodologiques relatives à chacune de ces variables.

Tableau II-5

Écoles publiques dispensant l'instruction primaire et secondaire à la minorité, par province et territoire, 1986

Écoles publiques	a	b	c	d	e	f
Effectifs (1 ^{re} à 12 ^e année)	Effectifs L.M.M.* (en %)	Population minoritaire (de 6 à 17 ans)	Effectifs L.M.M.* (en %)	Clientèle admissible	Effectifs C.A.** (en %)	

Colombie-Britannique	36	1 525	2 602	58,6	14 815	10,3
Alberta	17	1 575	5 318	29,6	21 093	7,5
Saskatchewan	12	838	1 762	47,6	10 722	7,8
Manitoba	34	5 211	6 681	78,0	17 754	29,4
Ontario	351	77 412	70 462	109,9	135 612	57,1
Québec	374	111 178 ***	86 946	127,9	121 513	91,5
Nouveau-Brunswick	154	46 086	46 350	99,4	57 331	80,4
Ile-du-Prince-Édouard	2	497	706	70,4	2 280	21,8
Nouvelle-Écosse	20	3 655	3 791	96,4	10 516	34,8
Terre-Neuve	2	68	267	25,5	1 117	6,1
Territoires du Nord-Ouest et Yukon	2	36	168	21,4	674	5,3
Total : Minorités	630	136 903	138 107	99,1	271 914	50,3
* de langue française	374	111 178	86 946	127,8	121 513	91,5
* de langue anglaise						

* L.M.M. = langue maternelle minoritaire.

** C.A. = clientèle admissible en vertu de l'article 23(1) a) de la *Charte*.

encore une fois relatifs dans la mesure où ils s'inscrivent dans le contexte de la croissance des effectifs des provinces et des territoires anglophones pendant cette même période.

Quant aux effectifs de la minorité anglophone du Québec, ils ont continué à décroître : 6 721 élèves, soit 6 p. 100 entre 1986-1987 et 1988-1989. Les effectifs provinciaux se sont quant à eux stabilisés, avec une diminution de 4 874 élèves, soit 0,5 p. 100. L'érosion des effectifs de la minorité anglophone se poursuit.

Compte tenu des tendances des effectifs que nous venons d'observer, voyons maintenant l'enseignement aux minorités de langue officielle dans l'ensemble du Canada, selon les *Rapports annuels* du Commissaire aux langues officielles. En ce qui a trait aux écoles dispensant l'instruction en français à la minorité francophone, leur nombre a diminué de 43 entre 1971 et 1986, passant de 678 à 635 (tableau II-4). Pour la minorité anglophone, la diminution du nombre d'écoles est de 138 pour la même période, soit de 519 à 381. Pour la minorité anglophone, la baisse se poursuit entre 1986-1987 et 1988-1989 : elle perd 11 autres écoles. Cependant, la situation se modifie pour la minorité francophone qui enregistre un gain net de trois écoles pendant cette même période.

Tableau II-4

Écoles publiques dispensant l'enseignement aux minorités de langue officielle, 1971, 1981, 1986, 1988

	1970-1971	1981-1982	1986-1987	1988-1989
Minorité francophone	678	655	635	638
Minorité anglophone	519	416	381	370

Source : Commissaire aux langues officielles. *Rapport annuel 1983*, p. 188; 1987, p. 246-247.

En somme, on observe que les onze années entre 1970 et 1981 n'ont guère contribué à l'amélioration de la démographie scolaire des minorités de langue officielle, qu'il s'agisse des anglophones ou des francophones. C'est également le cas pour les cinq premières années suivant l'adoption de l'article 23 de la *Charte*. Dans l'ensemble du Canada, pour ces seize années, la situation se détériore : les effectifs scolaires sont en baisse dans des proportions supérieures à la moyenne nationale. Le nombre d'écoles diminue également. Toutefois, la minorité francophone, depuis 1986, marque des progrès au chapitre des effectifs scolaires et du nombre d'écoles. Dans la description de chaque province et territoire, nous faisons état de la nature de ces progrès.

3. Synthèse des statistiques sur l'instruction, par province et territoire, en 1986

Nous présentons maintenant des données permettant de comparer les provinces et les territoires en regard à la situation de l'instruction des minorités de langue officielle en 1986, en vertu du critère énoncé à l'alinéa 23(1)a) de la *Charte canadienne des droits et libertés*.

Quoi qu'elle s'y applique inversement, la même constatation vaut pour la population minoritaire de langue anglaise du Québec en 1986. Ses effectifs scolaires représentaient 10,8 p. 100 des effectifs scolaires québécois alors que la population de la minorité anglophone du Québec représente 10,4 p. 100 de la population totale de cette province. Avant cette date, les effectifs scolaires de la minorité anglophone étaient encore plus supérieurs au pourcentage de la population minoritaire de langue maternelle anglaise par rapport à la population de cette province. En effet, les effectifs scolaires étaient supérieurs de 2,5 points en 1981 et de 2,6 en 1971. Les services éducatifs de la minorité anglophone exerçaient donc une force d'attraction pour d'autres groupes que les membres de la minorité de langue officielle anglaise.

Le tableau II-3 indique que, si en général les effectifs scolaires ont diminué de 17,6 p. 100 dans l'ensemble du pays entre 1970-1971 et 1986-1987 (soit une baisse de 994 099 élèves par rapport à 5 655 431), ceux des minorités francophone et anglophone ont diminué dans une proportion plus grande encore. Comparons la diminution des effectifs scolaires francophones avec celle de leurs provinces et de leurs territoires : les effectifs scolaires des provinces et des territoires anglophones ont diminué de 10,9 p. 100 entre 1970-1971 et 1986-1987 (soit une baisse de 442 485 élèves par rapport à 4 066 643), alors que ceux de la minorité francophone ont diminué de 23 p. 100 (45 024 élèves).

Durant la même période, les effectifs scolaires du Québec ont diminué de 34,7 p. 100, passant de 1 588 788 élèves dans le secteur public en 1970-1971 à 1 037 174 élèves dans le même secteur en 1986-1987. Pour leur part, les effectifs scolaires de la minorité anglophone ont diminué de 55,1 p. 100 (soit une baisse de 136 993 élèves par rapport à 248 855). La baisse marquée des effectifs scolaires de la minorité anglophone s'explique de plusieurs façons. D'abord, elle concorde avec une tendance fondamentalement au Québec où la totalité des effectifs scolaires diminue de façon beaucoup plus accentuée que dans l'ensemble du pays. La diminution des effectifs scolaires de la minorité anglophone découle ensuite des facteurs décrits précédemment, soit les retombées des dispositions linguistiques qui ont restreint l'accès au réseau scolaire anglophone pour les nouveaux arrivants; les effets d'une importante migration, résultant notamment des perspectives économiques et du climat d'insécurité ressenti par la population anglophone à la suite du mouvement d'affirmation de l'État du Québec qui ont poussé de nombreux anglophones à s'établir dans d'autres provinces du Canada; le faible taux de natalité chez les anglophones et une inscription croissante d'élèves anglophones dans des écoles de langue française.

Voyons maintenant quels sont les changements intervenus entre 1986 et 1988. Le tableau II-3 montre que les effectifs scolaires pour l'ensemble du Canada ont augmenté de 1,8 p. 100, soit de 82 024 élèves. Pour leur part, les effectifs des provinces anglophones ont augmenté de 2,4 p. 100, soit de 86 898 élèves, alors que ceux de la minorité francophone ont augmenté de 1,6 p. 100 (2 374 élèves), mais leur proportion comparativement aux effectifs des provinces et des territoires anglophones est en baisse de 0,1 point. Les effectifs de la minorité francophone marquent donc des progrès. Toutefois, ces progrès demeurent

Tableau II-3

Effectifs scolaires des écoles publiques* du Canada, 1971, 1981, 1986, 1988

1970-1971	Total : Minorités (en %)	1981-1982	Total : Minorités (en %)	1986-1987	Total : Minorités (en %)	1988-1989	Total : Minorités (en %)
5 655 431		4 770 295		4 661 332		4 743 356	
Canada							
Total :							
4 066 643		3 670 993		3 624 158		3 711 056	
Provinces anglophones							
Total :							
196 087 **	4,8	157 734 ***	4,3	151 063	4,2	153 437	4,1
Minorité francophone							
Total :							
1 588 788		1 099 302		1 037 174		1 032 904	
Québec							
Total :							
248 855	15,7	148 114	13,5	111 862	10,8	105 141	10,2
Minorité anglophone							
Total :							
444 942	7,9 ^a	305 848	6,4 ^a	262 925	5,6 ^a	258 578	5,5 ^a
Minorité							

SOURCE : Statistique Canada. *Langue de la minorité et langue seconde dans l'enseignement, niveaux*

- * Les écoles publiques font partie des réseaux de commissions scolaires. Les effectifs regroupent les niveaux élémentaire et secondaire, incluant la maternelle et la 13^e année dans les provinces et les territoires où elles existent. Sont également incluses les écoles de la Défense nationale.
- ** Exclut les provinces qui, en 1971, ne distinguent pas dans les statistiques l'instruction dans la langue de la minorité, soit la Colombie-Britannique et l'Alberta. Aucun programme n'est disponible dans les Territoires du Nord-Ouest et au Yukon.
- *** Exclut l'Alberta qui, en 1981, ne distingue pas les programmes d'immersion et l'instruction dans la langue de la minorité. Aucun programme n'est disponible dans les Territoires du Nord-Ouest et au Yukon.
- a Pourcentages des effectifs minoritaires par rapport à l'ensemble des effectifs scolaires des écoles publiques du Canada.

En comparant les tableaux II-1 et II-3, nous constatons que les pourcentages représentés par les effectifs scolaires de la minorité francophone par rapport aux effectifs des provinces et des territoires anglophones (tableau II-3) sont inférieurs à ceux que représente la population minoritaire francophone par rapport à l'ensemble de la population de ces provinces et de ces territoires (tableau II-1). En effet, alors qu'en 1986, les effectifs scolaires de la minorité francophone représentaient 4,2 p. 100 des effectifs scolaires des provinces et des territoires anglophones, la population minoritaire de langue maternelle française représentait, pour sa part, 5 p. 100 de la population de ces mêmes provinces et territoires, soit un écart de 0,8 point¹². Cet écart entre la population minoritaire de langue française et les effectifs scolaires de cette minorité était d'ailleurs plus important auparavant, soit de 1,0 point en 1981 et de 1,2 en 1971. Ces données montrent qu'il y a eu des progrès relatifs puisque la proportion des effectifs de la minorité se rapproche graduellement de la proportion de la population de langue maternelle française. Par contre, ces effectifs ayant diminué de 23 p. 100 (45 024 élèves) de 1971 à 1986, les progrès réalisés sont minimes.

En Ontario, la population francophone regroupe plus d'un demi-million de personnes, bien que son importance relative par rapport à l'ensemble de la population ontarienne ne soit que de 5,8 p. 100. Ceci explique l'importance des droits et des avantages acquis par cette minorité, quand on compare sa situation à celle d'autres minorités francophones dont la population est proportionnellement équivalente, notamment le droit à l'instruction en français à tout enfant admissible en vertu de l'article 23 qui a été reconnu à la suite de l'arrêt de la cour d'appel dans le *Renvoi constitutionnel* de 1984. Deux commissions scolaires homogènes de langue française ont aussi été créées. De plus, la loi 75 a instauré un modèle de gestion scolaire à représentation proportionnelle et garantie. Enfin, la *Loi sur les services en français* (*projet de loi n° 8*), sanctionnée en 1986 et entrée en vigueur en novembre 1989, a pour but d'assurer l'accès des services gouvernementaux en français dans 22 régions désignées en raison de l'importance numérique de leur population francophone.

Trois autres provinces ont des minorités francophones dont les populations sont proportionnellement aussi importantes que celles de l'Ontario : le Manitoba (5,3 p. 100), l'Île-du-Prince-Édouard (5,1 p. 100) et la Nouvelle-Écosse (4,5 p. 100). Les francophones doivent pourtant y revendiquer fortement leurs droits éducatifs. Dans chacune des ces provinces, les francophones ont dû avoir recours aux tribunaux pour concrétiser les droits conférés par l'article 23 de la *Charte*.

Dans les provinces ou les territoires aux minorités d'importance intermédiaire (1 à 3 p. 100) et moindre (0 à 1 p. 100), les gouvernements mettent plus de temps à reconnaître au français son statut de langue officielle et à implanter les droits constitutionnels de la minorité francophone, la raison la plus souvent invoquée étant que leur population francophone est trop peu nombreuse.

2. Statistiques sur l'instruction de 1971 à 1988

Afin de dégager les tendances fondamentales à l'égard des services éducatifs aux minorités de langue officielle, nous avons tenté au tableau II-3 de retracer l'évolution des effectifs scolaires des minorités francophone et anglophone pour l'ensemble du Canada entre 1971 et 1988. Précisons que les données relatives aux effectifs scolaires de la population totale du Canada sont complètes, alors que celles touchant les effectifs des minorités de langue officielle française offrent un tableau moins fidèle de la situation. En effet, comme nous l'avons vu dans la section historique de cet aperçu, certaines provinces ou territoires ne distinguaient pas, avant 1981, les programmes scolaires spécifiquement destinés à la minorité de langue française. Ou bien ces programmes étaient amalgamés aux programmes d'immersion, ou bien ils n'existaient tout simplement pas. La légende du tableau II-3 fait état de ces provinces et de ces territoires.

Tableau II-2

Regroupement des minorités de langue officielle, par rapport à la population totale de provinces ou territoires, 1986

Regroupement	Province/ territoire	Population minoritaire*	Total : Minorités (en %)
Nombréux (plus du tiers)	Nouveau-Brunswick	248 630	35,0
Considérable (de 10 à 33%)	Québec	730 760	11,2
Important (de 4 à 10%)	Ontario Manitoba Île-du-Prince-Édouard Nouvelle-Écosse	529 270 56 585 6 500 39 350	5,8 5,3 5,1 4,5
Intermédiaire (de 1 à 3%)	Territoires du Nord-Ouest et Yukon Alberta Saskatchewan Colombie-Britannique	3 115 62 215 25 910 50 925	3,0 2,6 2,6 1,8
Moindre (moins de 1%)	Terre-Neuve	3 115	0,5

Source : Statistique Canada.

* Langue maternelle unique et double (française et anglaise).

L'importance relative des populations minoritaires par province ou par territoire nous mène aux constatations suivantes. Ces minorités représentent de 0,5 à 35,0 p. 100 des populations totales des provinces ou des territoires. Suivant l'échelle établie¹⁰, la population minoritaire francophone du Nouveau-Brunswick est proportionnellement la plus nombreuse en 1986 (35 p. 100). Cette province a d'ailleurs le statut officiel de province bilingue depuis la promulgation de sa *Loi sur les langues officielles* en 1969, dont les dispositions sont entrées en vigueur au cours des huit années suivantes. La législation linguistique y fut élargie d'abord en 1981 par l'adoption du *projet de loi n° 88* qui reconnaissait l'égalité des deux communautés linguistiques, puis par l'adhésion à la *Charte* en 1982¹¹.

Un deuxième regroupement inclut la minorité anglophone du Québec; représentant 11,2 p. 100 de la population provinciale, l'importance numérique de cette minorité est considérable. Historiquement, cette minorité a bénéficié d'un réseau d'institutions scolaires qui lui est propre et qu'elle a pu gérer elle-même dans la majorité des cas. Toutefois, comme nous l'avons constaté dans la section précédente de cet aperçu, d'autres facteurs que le poids démographique ont déterminé la situation des anglophones du Québec en regard à leurs services éducatifs, notamment l'autonomie relative que leur avait assurée le réseau protestant du système d'éducation. Cependant, à l'heure actuelle, le déclin de son poids démographique préoccupe cette minorité.

Tableau II-1

Évolution démographique des minorités francophone et anglophone, selon les déclarations de langue maternelle, 1971, 1981, 1986

	1971	Total : Minorités (en %)	1981	(en %)	1986	(en %)
Population canadienne	21 568 310		24 343 180		25 309 330	
Total : Provinces anglaises	15 540 545		17 904 780		18 776 865	
Minorité francophone	926 400	6,0	942 085	5,3	945 860 *	5,0
					1 024 695 **	5,5
					1 047 609 ***	5,6
Total : Québec	6 027 765		6 438 400		6 532 465	
Minorité anglophone	789 185	13,1	706 115	11,0	678 785 *	10,4
					730 760 **	11,2
					789 990 ***	12,1
Total : Minorités	1 715 585	8,0 ^a	1 648 200	6,8 ^a	1 624 645	6,4 ^a

Source : Statistique Canada.

* Données pondérées par Statistique Canada aux fins de comparaison.

** Total des déclarations de langue maternelle unique, anglaise (au Québec) ou française (ailleurs au pays) et de langue maternelle double (française et anglaise).

*** Total des déclarations de langue maternelle unique, anglaise (au Québec) ou française (ailleurs au pays) et de langue maternelle double (française et anglaise) et de langues maternelles multiples (française et (ou) anglaise) et autre langue non officielle.

a Pourcentage des minorités de langue officielle par rapport à l'ensemble de la population canadienne.

La minorité francophone, qui représente dans l'ensemble du Canada une population plus nombreuse que la minorité anglophone, a vécu jusqu'aux années 1960 des situations historiques difficiles pour son épanouissement, comme nous l'avons vu précédemment. Sa dispersion sur un vaste territoire a joué un rôle déterminant dans ce cheminement historique. D'une part, elle se trouve fragmentée sur le territoire de neuf gouvernements provinciaux et deux gouvernements territoriaux. D'autre part, sa concentration démographique varie beaucoup, comme le montre le tableau II-2 qui regroupe les populations des minorités de langue officielle par rapport à la population totale de leur province ou de leur territoire.

permet de mieux discerner l'ensemble de la population visée par l'alinéa 23(1)a) tel que nous l'étudions dans ce chapitre. Ainsi, en 1986, 1 024 695 Canadiens, en dehors du Québec, déclarent que le français est leur langue maternelle (unique ou double, française et anglaise); ce groupe représente 5,5 p. 100 de la population totale des provinces anglophones du Canada. Au total, 181 880 personnes se sont déclarées de double langue maternelle française et anglaise, soit 18 p. 100 de la catégorie de langue maternelle unique et double (française et anglaise).

Au Québec, pour la même année, 730 760 personnes disent avoir l'anglais comme langue maternelle (unique ou double, française et anglaise), soit 11,2 p. 100 de la population du Québec. Au total, 150 730 personnes déclarent avoir le français et l'anglais comme langue maternelle, soit 20,6 p. 100 des déclarations de cette catégorie. L'ensemble de la population éventuellement visée par le critère de la langue maternelle unique ou double (française et anglaise) énoncé à l'alinéa 23(1)a) représente donc une proportion importante de la population canadienne, soit 6,9 p. 100, avec un total de 1 755 455 personnes de langue maternelle minoritaire française et anglaise (unique et double, française et anglaise) en 1986; environ 20 p. 100 de cette population est de double langue maternelle minoritaire (française et anglaise).

La troisième constatation porte sur la totalité des déclarations de langue maternelle de la minorité, qu'elles soient uniques, doubles ou multiples (indiquée par (***) au tableau II-1). L'ensemble de cette population de langue maternelle minoritaire française est de 1 047 609 personnes, soit 5,6 p. 100 de la population des provinces anglophones. Seulement 22 914 personnes appartiennent aux deux catégories de langue maternelle « française et autre », « française, anglaise et autre », soit 2,2 p. 100 de la totalité de la population de langue maternelle française (unique, double ou triple).

Toutefois, au Québec, les déclarations de langue « anglaise et autre », « française, anglaise et autre » sont plus importantes. Elles comptent 59 230 personnes, soit 7,5 p. 100 de la population de langue maternelle anglaise (unique, double ou triple) et portent à 789 990, soit 12,1 p. 100 de la population du Québec, le nombre de personnes se déclarant de langue maternelle anglaise (unique, double et multiple).

(1988), procédé comme suit : le nombre total de répondants ayant indiqué une langue maternelle unique s'additionne à la moitié seulement des doubles déclarations « langues maternelles française et anglaise » et au tiers des triples déclarations. Nous reprenons également ces données ajustées pour effectuer ce type de comparaison statistique.

Nous estimons néanmoins, à l'instar de Pailé (1988), que cette procédure ne doit pas être reprise lorsqu'il s'agit d'analyser le critère de la langue maternelle énoncé à l'alinéa 23(1a) de la *Charte*. Ce critère ne spécifie pas en effet que les bénéficiaires doivent avoir pour *seule* langue maternelle l'une des deux langues officielles⁸. Afin de respecter l'esprit et la lettre de cet alinéa, il faudrait considérer l'ensemble des bénéficiaires admissibles, c'est-à-dire tous ceux qui déclarent avoir comme langue maternelle celle de la minorité, y compris les bénéficiaires déclarant avoir aussi pour langue maternelle l'autre langue officielle ou une autre langue.

Pour notre part, nous avons choisi, au regard de la clientèle admissible en vertu de l'alinéa 23(1a), d'additionner la *totalité* des déclarations de « langue maternelle double française et anglaise » et les déclarations uniques de la langue maternelle de la minorité. Ce choix constitue une position médiane, regroupant la plus grande part des déclarations de langue maternelle de la minorité. En outre, nous présentons un tableau décrivant la position que nous estimons restrictive (ne compiler que les choix de l'unique langue maternelle minoritaire) et la position maximale (regrouper tous les choix de langue maternelle minoritaire, qu'ils soient uniques, doubles ou triples).

Le tableau II-1 relate l'évolution démographique des minorités francophones et anglophones selon les recensements de 1971, 1981 et 1986 de Statistique Canada en fonction du critère de la langue maternelle. Dans le cas du recensement de 1986, sont départagées et marquées d'un astérisque (*) les données ajustées aux fins de comparaison avec les années antérieures. Nous présentons également les données incluant l'ensemble des déclarations « langue maternelle française et anglaise » (**) aux fins d'analyse des critères énoncés à l'article 23 de la *Charte* et celles qui comptent l'ensemble des déclarations de langue maternelle de la minorité (unique, double ou multiple) (***).

Ces données nous mènent à trois constatations. La première, établie du point de vue des données ajustées, nous permet d'observer que le pourcentage des deux minorités de langue officielle décroît par rapport à leur population majoritaire respective, de 1971 à 1986. La minorité de langue française passe en effet de 6 à 5 p. 100 tandis que la minorité de langue anglaise passe de 13,1 à 10,4 p. 100. En nombres absolus, la baisse de 2,7 points de la minorité anglophone du Québec représente une très grande diminution, soit 110 400 personnes en quinze ans. On observe également que les minorités des deux langues officielles ont tendance à devenir de plus en plus minoritaires par rapport à l'ensemble de la population totale du Canada, passant de 8 p. 100 en 1971 à 6,4 p. 100 en 1986.

La deuxième constatation, établie du point de vue des données incluant les déclarations de « langue maternelle double française et anglaise » et celles de langue maternelle unique,

Or, la centralisation des services et du financement scolaires, entreprise dès la création du ministère de l'Éducation, visait notamment à uniformiser le mode de financement des secteurs catholique et protestant. C'est ainsi que la minorité de langue anglaise a perdu par la suite une partie de l'autonomie dont elle jouissait dans la gestion de ses services éducatifs, en plus de voir diminuer, dans une certaine mesure, la diversité et la qualité de ces services. Enfin, les lois linguistiques adoptées successivement par le gouvernement québécois depuis les années 1960, en l'occurrence les lois 22, 63 et 101, ont pour effet de réduire progressivement la force d'attraction exercée depuis toujours par le système scolaire anglophone sur les nouveaux arrivants. Ces lois comportent toutes en effet des volets régissant directement la langue d'enseignement, volets qui visent précisément à inverser la tendance traditionnelle et à intégrer les nouveaux arrivants à la majorité francophone⁷.

Tels sont les principaux facteurs à l'origine des inquiétudes actuelles manifestées par la minorité anglophone du Québec concernant son système scolaire.

B. DONNÉES STATISTIQUES

1. Données démographiques générales

Nous résumons maintenant quelques données démographiques générales, que nous expliquerons dans les sections II à XII, pour chaque province et territoire. Ces données nous permettront de constater l'état de l'éducation des minorités de langue officielle eu égard aux droits conférés par l'article 23 de la *Charte*.

Précisons tout d'abord la méthodologie régissant l'analyse des données que nous avons tirées notamment d'une compilation spéciale de Statistique Canada. Lors du recensement de 1986, Statistique Canada a instauré un changement qui visait à mieux rendre compte d'une réalité linguistique, soit les langues maternelles doubles ou multiples. Au lieu de la contrainte habituelle obligeant les répondants à indiquer une langue maternelle unique, ceux-ci pouvaient choisir plusieurs langues maternelles dont 1) le français et l'anglais, 2) le français et une langue non-officielle, 3) l'anglais et une langue non-officielle, et 4) le français, l'anglais et une langue non-officielle.

Ces choix doubles ou multiples peuvent avoir pour effet d'augmenter statistiquement le nombre total de personnes se déclarant de langue maternelle minoritaire puisque, lors de la compilation du recensement, les déclarations de langue maternelle unique et celles de langues maternelles doubles ou multiples peuvent être regroupées. Pour l'essentiel, les données que nous utilisons ici retiennent, en plus des déclarations de langue maternelle unique, les cas de double déclaration « Français-anglais ». Les autres cas de déclarations doubles (« Français ou anglais et autre ») ou multiples (« Français et anglais et autre ») apportent à l'occasion, un complément d'information.

Toutefois, aux fins de comparaison avec les années antérieures, Statistique Canada, dans son document intitulé *Recensement du Canada de 1986 : Données linguistiques ajustées*

linguistique anglophone dans son ensemble. Il lui fut aussi de plus en plus difficile d'entretenir chez ses membres une vision commune de l'éducation.

D'une part, l'arrivée massive, vers le début du siècle à Montréal, d'immigrants d'origine juive, dont ni la langue maternelle ni la religion n'était inscrite dans le système scolaire, a eu pour effet d'augmenter les effectifs du secteur protestant anglophone. C'est à ce dernier, en effet, que la plupart des immigrants juifs ont choisi originellement d'intégrer leurs enfants (Jones, 1982, p. 103). Ainsi, conclut Rudin, « les écoles protestantes servirent de véhicule à l'intégration des Juifs au Québec anglophone » (p. 253). La composition ethnique de la population étudiante du secteur protestant subit alors une modification importante : d'origine britannique à 94 p. 100 en 1891 (dont 5 p. 100 d'origine française et 1 p. 100 d'origine autre que française ou britannique), elle passait à 78 p. 100 en 1980 en raison de l'augmentation à 15 p. 100 des étudiants d'origine autre que française ou britannique (Rudin, 1986, p. 250). Le système scolaire protestant devient également, dans les faits, largement non-confessionnel.

D'autre part, le secteur anglophone catholique, peuplé d'abord d'élèves de descendance irlandaise (de confession essentiellement catholique), a vu sa population s'accroître considérablement après la Deuxième Guerre mondiale, avec l'arrivée massive d'immigrants d'origine italienne de confession catholique. Ne parlant ni français ni anglais, ces derniers ont choisi de s'intégrer au secteur anglophone de la Commission des écoles catholiques de Montréal (CECM) au sein duquel, depuis 1928, un comité anglophone bénéficiait d'une semi-autonomie.

Jones résume ainsi le dilemme que crée, pour la minorité anglophone, le système confessionnel du Québec :

D'une part, les protestants anglophones eurent à régler deux problèmes principaux, soit la question du regroupement et la façon de répondre aux besoins de ceux qui n'étaient ni protestants ni catholiques. D'autre part, les catholiques anglophones se posaient l'éternelle question de savoir comment survivre dans un système où les catholiques francophones étaient douze fois plus nombreux. (1982, p. 101)

Par ailleurs, jusqu'à la création du ministère de l'Éducation du Québec, en 1964, la qualité et la pleine autonomie du système scolaire protestant avaient pu être assurées grâce à la force économique de ses membres. Les taxes résidentielles, commerciales et industrielles levées par les commissions scolaires protestantes, servaient entièrement à financer les écoles protestantes (Rudin, 1986). Ainsi, grâce aux taxes foncières, conjuguées aux ressources économiques importantes dont disposait le secteur scolaire protestant, ce dernier a toujours bénéficié, surtout dans la région de Montréal, d'un statut supérieur au sein du système scolaire québécois.

du *Québec anglophone 1759-1980*, présente en ces termes l'évolution de l'enseignement en anglais au Québec :

[...] c'est que le Québec de langue anglaise fut complètement transformé dans la période de l'après-Confédération. Cette population, n'étant plus massive-ment d'origine britannique, ni enracinée dans différentes régions de la province, se retrouvait, vers la fin du XIX^e siècle, diversifiée, sur le plan ethnique, et regroupée à Montréal, où l'élite anglophone, qui avait jadis été puissante, voyait son influence grandement réduite. (1986, p. 235)

Les minorités francophones ont rarement disposé d'un pouvoir politique, économique et socio-culturel important. En revanche, les anglophones du Québec — résultat d'une transformation complète de leurs rapports avec la majorité francophone — qui, comme l'indique Rudin, formaient déjà un groupe puissant devenaient une collectivité hétérogène au sein d'une communauté majoritaire qui veut affirmer son identité. Avant la Révolution tranquille et la consolidation de l'État québécois à compter des années 1960, les anglophones de souche britannique au Québec faisaient partie d'une majorité relativement homogène : celle de l'ensemble canadien. La Révolution tranquille et ses suites ont modifié cette réalité : avec l'affirmation nouvelle de l'État québécois, le caractère distinct de la société québécoise s'est confirmé de plus en plus. C'est à partir de ce moment que les anglophones du Québec ont commencé à sentir qu'ils formaient une minorité.

Trois raisons principales permettent d'expliquer l'érosion du système d'éducation de la minorité de langue anglaise : 1) la perte graduelle d'homogénéité du groupe anglophone au sein d'un système fondé sur la dualité confessionnelle; 2) la centralisation des services et du financement scolaires à la suite de la création en 1964 du ministère de l'Éducation; 3) l'instauration d'une législation linguistique provinciale dont certains volets concernent directement la langue d'enseignement et visent à diriger les enfants nouvellement arrivés vers le système scolaire de la majorité.

Au Québec, le régime confessionnel a modifié en profondeur aussi bien l'éducation de la population de langue anglaise que celle de la population de langue française. Avant la Confédération, un surintendant nommé unifiât, en apparence, le système d'éducation des deux groupes confessionnels, les catholiques et les protestants. L'enchaînement des droits confessionnels dans la *Loi constitutionnelle de 1867* a consacré l'autonomie de chaque groupe confessionnel en matière scolaire. En 1875, le ministère de l'Instruction publique est aboli. Chaque comité confessionnel, protestant et catholique, a désormais pleine compétence en matière scolaire. Jusqu'en 1964, l'État se verra confiné dans un rôle restreint en matière de gestion du système d'éducation.

Si, à l'origine, la dualité confessionnelle du système a permis aux anglophones protestants d'origine britannique de prendre en main leur éducation, cette dualité a donné lieu à l'accroissement progressif de l'hétérogénéité ethnique et même confessionnelle du groupe

Branswick, où les bassins démographiques de la minorité de la langue française étaient assez vastes en 1966 pour que de plus grandes unités scolaires regroupent les populations francophones, les vagues successives de consolidation administrative ont intégré les minorités francophones au sein des majorités. Au fur et à mesure que s'est agrandi le champ d'action des commissions scolaires, les francophones élus à ces commissions se sont trouvés de plus en plus éloignés de leur communauté et de leurs intérêts. À titre d'exemple, les réorganisations scolaires qui ont eu lieu en Nouvelle-Écosse (1864 et 1982), au Manitoba (1890 et 1971), en Alberta (1913, 1937 et 1964), en Saskatchewan (1944), en Ontario (1969) et à l'Île-du-Prince-Édouard (1971 et 1972) ont touché les minorités francophones de ces provinces.

Depuis les années 1970, de nouvelles préoccupations apparaissent concernant la gestion scolaire. Comme nous le verrons au Chapitre IV, le Nouveau-Branswick y répondra en proposant l'établissement de commissions scolaires linguistiques qui accordent à la minorité de langue française le contrôle complet de sa gestion scolaire. L'article 23 entérine ces préoccupations et préconise la création de nouveaux modèles de gestion⁴ dans toutes les régions du pays.

Enfin, entre 1970 et 1982, la nouvelle prise de conscience de la dualité linguistique canadienne a grandement contribué à augmenter la popularité des programmes d'immersion en français. Paradoxalement, l'avènement de ces programmes destinés à la majorité anglophone a eu pour effet de freiner l'éducation en français conçue pour la minorité francophone : les programmes destinés aux anglophones et les services offerts aux francophones ont été partiellement sinon complètement amalgamés, depuis l'élaboration de programmes jusqu'à leur unité de gestion au sein des ministères de l'Éducation et ce, dans la plupart des provinces et des territoires.

Ainsi, le ministère de l'Éducation de l'Alberta ne distinguait pas encore, en 1982⁵, les effectifs scolaires appartenant à la minorité de langue officielle de ceux de la majorité inscrits aux programmes d'immersion. Encore aujourd'hui, il existe dans certaines provinces anglophones des écoles et des classes où francophones et anglophones étudient le français dans un même programme d'immersion. Toutefois, la jurisprudence sur l'article 23 a établi une nette distinction entre les programmes destinés à ces deux groupes⁶.

C'est dans ce contexte qu'il faut situer la montée actuelle des revendications judiciaires, politiques et communautaires concernant le droit à l'instruction pour les minorités francophones, dans toutes les régions du pays, et le droit à la gestion des services éducatifs à la minorité francophone se résorbent graduellement de sorte qu'en général, cette minorité fait des progrès importants un peu partout au pays.

2. La minorité anglophone du Québec

L'histoire de l'éducation de la minorité anglophone du Québec se fait en quelque sorte à l'inverse de l'histoire des minorités de langue française au Canada. Rudin, dans son *Histoire*

Toutefois, vers les années 1910-1920, l'évolution de l'éducation française au pays prend une nouvelle direction. Les minorités francophones s'organisent graduellement en larges associations, augmentant ainsi considérablement leur influence auprès des autorités provinciales. La plupart des provinces adoptent désormais une attitude plus ouverte à l'égard des collectivités francophones et commencent peu à peu à modifier leur législation de manière à réhabiliter l'enseignement en français.

Pourtant, cette libéralisation se limite souvent à certains niveaux scolaires et ne concerne parfois qu'une partie seulement de la journée scolaire, comme ce sera le cas des lois ou règlements promulgués par les provinces suivantes : Manitoba (1896, 1955, 1963, 1967 et 1970), Nouvelle-Écosse (1908 et 1981), Saskatchewan (1896 et 1967), Alberta (1925 et 1964), Ontario (1851, 1944, 1966 et 1968), Île-du-Prince-Édouard (1971 et 1980) et Nouveau-Brunswick (1977). Mais, comme l'indiquent encore ces dates, le changement d'attitude est beaucoup plus marqué à compter des années 1960 et c'est le Nouveau-Brunswick, l'Ontario et le Manitoba qui font alors figure de proue.

Vers la même époque, le gouvernement fédéral reconnaît officiellement la dualité linguistique du pays et entend adopter une politique nationale respectueuse de cette dualité. Faisant suite notamment au *Rapport sur l'éducation* de la Commission royale d'enquête sur le bilinguisme et le biculturalisme (1968) et à la *Loi sur les langues officielles* (1969), la question des droits scolaires des minorités de langue officielle devient, au cours des années 1970, un enjeu central des négociations intergouvernementales. Ces négociations permettront aux minorités francophones de franchir des pas très importants en matière d'éducation. À cet égard, l'article 23 de la *Charte* constitue aujourd'hui l'aboutissement, à l'échelle nationale, de la reconnaissance des droits à l'enseignement dans la langue de la minorité francophone.

Parallèlement au secteur public, un réseau d'institutions privées a été mis sur pied par les communautés religieuses francophones lorsque les gouvernements provinciaux ont adopté des mesures restrictives à l'égard de l'enseignement en français. Ce réseau a permis à une part de la minorité de se donner des conditions d'épanouissement en préservant l'accès à un enseignement dans sa langue dans des établissements homogènes tout en contrôlant la gestion de cet enseignement. Toutefois, depuis le début des années 1970, ce réseau a pratiquement disparu. En 1990, il ne reste plus qu'une seule école née de ce réseau : le collège Mathieu de Gravelbourg en Saskatchewan. En Ontario, il existe quatre écoles privées francophones de création relativement récente et qui sont toutes situées à Ottawa. Les institutions privées ont donc joué un rôle important dans la survie de la minorité francophone mais, aujourd'hui, ce système alternatif d'éducation n'est plus disponible à cette minorité. Par ailleurs, les minorités de langue française ont souvent perdu leur autonomie de gestion scolaire lors de la consolidation des petites commissions scolaires en grandes unités administratives. Ces modifications des frontières scolaires par les gouvernements provinciaux ont contribué à retirer à la minorité francophone la gestion, même partielle, des écoles locales qu'elle avait acquise dans la pratique. À l'exception du Nouveau-

2. la consolidation des districts scolaires entraînant la perte de contrôle local qu'avaient réussi à exercer les collectivités francophones, suivie de l'élaboration de nouveaux modèles de gestion venant accommoder les minorités francophones;

3. le remplacement partiel ou même complet des programmes d'enseignement dans la langue maternelle destinés à la minorité par des programmes d'immersion en français langue seconde destinés à la majorité, suivi par la distinction officielle entre ces programmes.

Nous résumons ici la nature de ces événements³; les sections subséquentes du chapitre établissent, dans leur partie « historique » respective, la manière dont ces événements se sont déroulés dans chaque province et territoire.

Les premières écoles françaises furent fondées avant la Confédération ou avant l'adhésion à la *Loi constitutionnelle de 1867*. En 1867, l'établissement de la Confédération canadienne, qui réserve dorénavant aux gouvernements provinciaux le pouvoir exclusif de légiférer en matière d'éducation, a des répercussions décisives sur l'évolution de l'éducation française au pays. Par le truchement du financement public, entre autres choses, ces gouvernements occupent graduellement un domaine de compétence qui relevait jusque-là des pouvoirs locaux, domaine dans lequel les collectivités francophones jouissaient de la plus grande autonomie. Les gouvernements provinciaux établissent ainsi des lois et des règlements régissant directement et unilatéralement, à l'échelle de chaque province, la langue d'instruction, la certification du personnel enseignant, les matières à enseigner, les manuels scolaires, l'étendue des districts scolaires, etc.

Soucieux de consolider son pouvoir et de satisfaire avant tout sa majorité linguistique, chaque gouvernement provincial tente désormais d'implanter un système d'éducation uniforme à la grandeur de son territoire. En règle générale, les mesures adoptées favorisent la majorité anglophone au détriment de la minorité francophone. De nombreuses lois viennent restreindre, abroger ou encore interdire, en tout ou en partie, les dispositions ayant permis jusque-là l'instruction en français, tandis que l'anglais est imposé peu à peu comme seule langue d'instruction autorisée. Ce fut le cas, par exemple, à l'Île-du-Prince-Édouard (1854), au Nouveau-Brunswick (1871), en Ontario (1889 et 1913), au Manitoba (1890 et 1916), en Alberta (1892) et en Saskatchewan (1892, 1918 et 1931).

La promulgation du Règlement n° 17 en Ontario (1913) en est un exemple connu. Ce règlement, qui devait rester en vigueur jusqu'en 1927, imitait l'enseignement en français aux deux premières années du primaire et l'interdisait dans les autres classes (Dutresne *et al.*, 1988, p. 304). Il constitue un événement majeur dans la lutte pour la survie de la minorité francophone de cette province puisqu'il se heurta à bien des résistances et fit l'objet de vives protestations.

I. APERÇU GÉNÉRAL : SURVOL HISTORIQUE, DONNÉES STATISTIQUES ET CONTEXTE SYSTÉMIQUE

La problématique de l'instruction des minorités de langue officielle dans le contexte canadien étant fort complexe, un tour d'horizon aussi général que celui que nous présentons a forcément ses limites. De nombreux facteurs touchant directement ou indirectement cette problématique, tels l'importance de la demande de services éducatifs dans la langue de la minorité ou l'accessibilité et la qualité de ces mêmes services, n'ont pu être soumis à notre analyse. Enfin, comme les taux d'assimilation sont aussi traités de façon sommaire, des recherches ultérieures devraient approfondir davantage ces questions.

L'aperçu général fait d'abord état des principaux points de repère historiques permettant d'éclairer la conjoncture actuelle relative à l'éducation des minorités de langue officielle¹. Étant donné l'évolution distincte à cet égard de la situation des minorités de langue française du Canada et de la minorité de langue anglaise du Québec, nous élaborons pour chacune d'elles un historique distinct.

Nous résumons ensuite les données statistiques permettant de cerner et de comparer pour l'essentiel la situation des minorités de langue officielle eu égard à l'instruction. Les données suivantes sont étayées pour chaque province ou territoire : 1) population de la minorité de langue officielle par rapport à la population totale, 2) nombre d'écoles fournissant l'enseignement dans la langue de la minorité, 3) effectifs scolaires de la minorité bénéficiant de cet enseignement, 4) nombre d'enfants d'âge scolaire (de 6 à 17 ans) dont la langue maternelle est celle de la minorité, et 5) nombre d'enfants d'âge scolaire (de 6 à 17 ans) établi en vertu du critère énoncé à l'alinéa 23(1)a) de la *Charte canadienne des droits et libertés*². En troisième lieu, sous la rubrique Contexte systémique, nous présentons un résumé du nombre minimal fixé par chaque province ou territoire comme condition d'exercice du droit à l'instruction conféré par l'alinéa 23(3)a) et le droit à la gestion énoncé à l'alinéa 23(3)b) ainsi qu'une description sommaire des structures de gestion scolaire mises en vigueur pour les minorités de langue officielle.

A. SURVOL HISTORIQUE

1. La minorité francophone

Trois grands événements historiques communs à l'ensemble des provinces et des territoires ont marqué, à des degrés divers selon les régions, l'évolution de l'instruction en français et de la gestion scolaire. Chacun de ces événements comporte une période restrictive suivie d'une période plus favorable à l'épanouissement de la minorité de langue française :

1. Le retrait des droits, voire parfois l'interdiction de l'enseignement en français, suivi d'une reconnaissance graduelle de droits à cet égard pour les minorités francophones;

Chaque province canadienne, chaque territoire canadien est modelé de façon unique par sa géographie, son histoire, son immigration. Dans le présent chapitre, nous dresserons une esquisse de cet ensemble qu'est le Canada en ce qui touche spécifiquement la situation des minorités de langue officielle au chapitre de l'éducation. Les paramètres établis par l'article 23 de la *Charte canadienne des droits et libertés*, décrits au Chapitre premier, nous ont fourni le cadre d'analyse de cette situation concernant les programmes d'instruction, les écoles homogènes et le système de contrôle de la gestion scolaire.

Rapportons brièvement ces paramètres. L'article 23 décrit les trois critères d'admissibilité des parents bénéficiaires des droits; l'ensemble de leurs enfants — les ayants droit — constitue une clientèle admissible aux services éducatifs. Ces parents doivent : 1) avoir comme langue maternelle celle de la minorité, 2) avoir reçu leur instruction primaire dans la langue de la minorité ou 3) avoir un enfant qui a reçu ou reçoit son instruction primaire ou secondaire dans la langue de la minorité. Les services éducatifs, pour leur part, sont soumis à deux conditions : ils doivent être financés à même les fonds publics et être de niveaux primaire et secondaire. Ces services éducatifs sont de deux ordres : l'instruction doit être dispensée dans le cadre des programmes et dans des classes destinés à la minorité et, lorsque le nombre est suffisant, cette instruction est fournie dans des « établissements de la minorité », c'est-à-dire dans des écoles homogènes.

Ce chapitre est avant tout descriptif. Un aperçu, qui fournit des données essentielles à la compréhension de tout le chapitre, sert d'introduction générale à chacune des sections subséquentes, lesquelles décrivent, de façon plus détaillée, l'état actuel de l'instruction et de la gestion scolaire des minorités de langue officielle dans chaque province et territoire. Afin de relater comment la minorité a acquis ses droits éducatifs et de situer dans son contexte, selon les paramètres établis, la reconnaissance de ces droits par les pouvoirs provinciaux et territoriaux, chaque section comprend un résumé de l'histoire de l'instruction dans la langue de la minorité et de la gestion de ces services, résumé qui retrace principalement l'évolution des lois et des règlements provinciaux relatifs à ces questions.

L'analyse permet ensuite de cerner :

- le contexte démographique, en particulier la part de la population de la province ou du territoire que représente la population ayant comme langue maternelle celle de la minorité;
- l'état des services touchant l'instruction, à savoir les lois et les règlements régissant l'accès à l'instruction, le nombre d'écoles dispensant l'enseignement à la minorité dans sa langue, le nombre d'écoles homogènes et enfin le nombre d'étudiants dans ces écoles en regard du nombre d'ayants droit établi en vertu de l'alinéa 23(1)a);
- le système de gestion scolaire en vigueur, son administration, le rôle du ministère de l'Éducation, celui des commissions scolaires et des parents et finalement le système de gestion scolaire préconisé pour la minorité de langue officielle.

XI. TERRE-NEUVE

A. Historique

B. Le contexte actuel

1. Statistiques

2. Description du système scolaire

C. Résumé

XII. TERRITOIRES DU NORD-OUEST ET YUKON

A. Historique

B. Le contexte actuel

1. Statistiques

2. Description du système scolaire

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C. Résumé

VII. QUÉBEC

A. Historique

B. Le contexte actuel

1. Statistiques

2. Description du système scolaire

C. Résumé

VIII. NOUVEAU-BRUNSWICK

A. Historique

B. Le contexte actuel

1. Statistiques

2. Description du système scolaire

C. Résumé

IX. Île-du-Prince-Édouard

A. Historique

B. Le contexte actuel

1. Statistiques

2. Description du système scolaire

C. Résumé

X. NOUVELLE-ÉCOSSE

A. Historique

B. Le contexte actuel

1. Statistiques

2. Description du système scolaire

C. Résumé

III.	ALBERTA	
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CHAPITRE II

L'ÉTAT DE L'ÉDUCATION DE CHACUNE DES
MINORITÉS DE LANGUE OFFICIELLE AU
CANADA

I. APERÇU GÉNÉRAL : SURVOL HISTORIQUE,
DONNÉES STATISTIQUES ET CONTEXTE
SYSTÉMIQUE

A. Surlvol historiqne

- 1. La minorité francophone
- 2. La minorité anglophone du Québec

B. Données statistiques

- 1. Données démographiques générales
- 2. Statistiques sur l'instruction de 1971 à 1988
- 3. Synthèse des statistiques sur l'instruction, par province et territoire, en 1986

C. Contexte systématique

- 1. Conditions d'exercice des droits de l'article 23
- 2. Systèmes de gestion

II. COLOMBIE-BRITANNIQUE

A. Historique

L'état de l'éducation de
chacune des minorités
de langue officielle au Canada

CHAPITRE II

11. Pour notre part, nous émettons l'hypothèse suivante : les tribunaux accorderaient des droits en vertu de l'article 23 à toute personne se déclarant de langue maternelle de la minorité, soit langue maternelle unique (française ou anglaise au Québec), langue maternelle double (« française et anglaise et autre »). Toutefois, dans notre étude statistique du Chapitre II, la position médiane est notre point de référence, c'est-à-dire celle incluant les déclarations de langue maternelle unique (française ou anglaise) et celles de langue maternelle double (française et anglaise) (les déclarations de l'unique langue maternelle de la minorité) et la position maximale (toutes les déclarations des répondants ayant choisi la langue de la minorité, qu'elle soit unique, double ou même triple).
12. C'est en raison de cette précision que l'étude du Chapitre II a porté plus spécifiquement sur les années scolaires que recoupent le primaire et secondaire soit, de la 1^{re} à la 12^e année. En général, ces années incluent les enfants de 6 à 17 ans.
13. Conformément aux lois provinciales en vigueur, l'expression « commission scolaire » est employée au Québec pour désigner le système de gestion scolaire à l'échelle régionale ou locale, alors que dans les autres provinces canadiennes, la même réalité est désignée par l'expression « conseil scolaire ». Dans ce document toutefois, nous utiliserons habituellement l'expression « commission scolaire », à moins de devoir apporter (comme c'est le cas au Chapitre II) certaines précisions particulières au système en vigueur dans chaque province ou territoire (par exemple : district, division, conseil scolaire).
14. Nous retenons cette option dans nos analyses puisqu'elle concorde avec la méthode traditionnellement démocratique de gérer les fonds publics.
15. C'est d'ailleurs cette interprétation que nous juxtaposons, dans le Chapitre II, au nombre actuel d'enfants inscrits dans les programmes et les écoles de la minorité.
16. Le juge O'Sullivan de la cour d'appel du Manitoba est du même avis.

1. Les résultats des recherches et la description des événements décrits dans ce document ne vont pas au-delà du 15 février 1990. Toutefois, étant donné l'importance capitale de l'arrêt que la Cour suprême du Canada a rendu dans l'affaire *Mahé et al. c. la reine*, le 15 mars 1990, le lecteur trouvera à l'Appendice B un résumé de cet arrêt et une analyse de ses incidences sur notre étude.
2. Il s'agit notamment de parents et d'associations minoritaires, d'administrateurs scolaires, de représentants des gouvernements fédéral, provinciaux et territoriaux, de juristes et de chercheurs.

Chapitre premier

1. Le Manitoba est la seule province ayant éliminé les droits entérinés lors de l'entrée dans la Confédération. Par l'adoption de l'*Acte du Manitoba*, cette province garantissait les droits des minorités religieuses. Toutefois, ces garanties furent éliminées en 1890 par le *Public School Act*.
2. À l'exception de celui du Québec.
3. Il s'agit de dix causes, dont trois ont été jugées par deux cours : les affaires *Quebec Association of Protestant School Boards, Mahé et al. c. Alberta* et *Lavoie et al. c. Nouvelle-Écosse*. Voir le tableau I-1.

4. Chacun des cinq juges de la cour d'appel du Manitoba a émis son propre avis dans cette affaire. En l'occurrence, il s'agit des juges Monnin, O'Sullivan, Hall, Philip et Twaddle. Le juge Philip, pour sa part, se dit d'accord avec le juge Twaddle.

5. Toutefois, un résident des Territoires du Nord-Ouest ou du Yukon pourrait porter l'interprétation du mot « province » devant les tribunaux et se réclamer des droits conférés par l'article 23. Nous supposons cependant que le terme « province » serait alors interprété libéralement et désignerait également ces deux territoires. Dans la présente étude, nous les avons donc inclus au même titre que les provinces canadiennes.
6. Pour plus de clarté, nous adoptons la terminologie suivante : le terme « bénéficiaire » se réfère aux parents des ayants droit constitue une « clientèle éventuelle » ou encore une « clientèle admissible » en vertu de l'article 23.

7. Au Québec, cet article entrera en vigueur lorsque le gouvernement ou l'assemblée législative de la province l'autorisera. À ce sujet, voir la section du Chapitre II sur le Québec.
8. Toutefois, la définition de la langue maternelle a été modifiée par Statistique Canada lors d'un recensement effectué en 1986, les directives permettant de déclarer plus d'une langue maternelle. Ainsi, en réponse à la question 6 sur la langue maternelle : « Quelle est la langue que vous avez apprise en premier lieu dans votre enfance et que vous comprenez encore ? », les répondants pouvaient choisir une ou plusieurs langues maternelles.

9. Le jugement de la Cour suprême est d'ailleurs explicite à cet égard : « Sans doute est-ce un régime général que le constituant a voulu instaurer au sujet de la langue de l'enseignement par l'article 23 de la *Charte* et non pas un régime particulier pour le Québec. Mais, vu l'époque où il a légiféré, et vu surtout la rédaction de l'article 23 de la *Charte* lorsqu'on la compare à celle des articles 72 et 73 de la loi 101, il saute aux yeux que le jeu combiné de ces deux derniers articles est apparu au constituant comme un archétype des régimes à réformer ou que du moins il fallait l'effecier et qu'il lui a inspiré en grande partie le remède prescrit pour tout le Canada par l'article 23 de la *Charte*. » (p. 17)

10. Voir la section « Aperçu » du Chapitre II pour une description détaillée à cet égard.

des commissions scolaires, parce que ces dernières ont des limites territoriales locales définies en fonction de la population majoritaire. Cependant, ces frontières sont arbitraires pour la minorité à qui les droits sont conférés « partout dans la province ».

Alors que le jugement de la cour d'appel de l'Ontario (1984) détermine le nombre suffisant à partir des *ayants droit* (la clientèle éventuelle), les autres tribunaux privilégient la clientèle qui *demande* à bénéficier de services en vertu des droits conférés.

Deux notions du « nombre suffisant » sont généralement invoquées : la première confère le droit à l'instruction; la deuxième accorde aux minorités le droit à des établissements.

III. CONCLUSIONS

Le premier objectif de l'article 23, soit établir des services éducatifs uniformes à l'échelle nationale pour les minorités de langue officielle, s'oppose au champ de compétence des autorités provinciales en matière d'éducation. Il est généralement reconnu qu'il est impossible d'instaurer, dans toutes les régions du pays, un seul système répondant aux besoins des minorités de langue officielle. Les tribunaux demandent cependant aux législatures provinciales de prendre les mesures qui s'imposent pour établir le système requis dans leur province respective.

Le deuxième objectif visé par l'article 23, soit l'épanouissement de la communauté minoritaire, est unanimement reconnu par les tribunaux tout comme l'est la mise en œuvre des moyens éducatifs visant à favoriser l'épanouissement des minorités. Sont indispensables les éléments suivants : 1) le regroupement de la minorité selon des critères d'admissibilité aux droits, 2) l'instruction dans la langue de la minorité, 3) la formation d'établissements autonomes distincts lorsque le nombre le justifie, 4) la gestion des établissements et des classes et 5) l'égalité dans la qualité des services.

Le juge Purvis de la cour du banc de la reine de l'Alberta (1985) reconnaît le droit à un « degré de contrôle exclusif » pour la minorité et en nomme certaines composantes.

La cour d'appel de l'Alberta confirme que la minorité possède, lorsque le nombre est suffisant, le droit à un système complet d'éducation parallèle à celui de la majorité.

La cour du banc de la reine de la Saskatchewan (1988) estime que le droit de gestion est conféré dans le cas d'établissements séparés autonomes; lorsque l'instruction est dispensée dans des classes partagées, aucun droit particulier de gestion n'est conféré à la minorité qui doit alors se contenter de comités consultatifs.

Le droit de gestion reconnu par la cour d'appel de l'Ontario (1984) est assorti aux classes et aux écoles. Il se rapporte à toutes les décisions qui touchent l'enseignement minoritaire.

La cour d'appel de l'Île-du-Prince-Édouard (1988) conclut que la minorité a un droit de participation à l'élaboration et à la prestation de programmes.

Tous les juges de la cour d'appel du Manitoba (1990) disent que l'article 23 n'accorde pas, ni implicitement ni explicitement, de droit complet à la gestion scolaire.

Tous les jugements notent encore que la mise en œuvre de mesures visant à assurer le droit de gestion demeure un domaine de compétence provinciale.

F. L'égalité des services

En principe, tous les jugements rendus sur l'article 23 reconnaissent le droit à l'égalité de services pour la minorité.

Au chapitre de l'instruction, les jugements sont unanimes : l'éducation de la minorité doit être de qualité égale à celle de la majorité. Il appartient cependant aux législatures provinciales d'établir des modalités (lois, règlements, système d'éducation) qui assurent cette qualité.

Le principe d'égalité est plus difficile à préciser en ce qui concerne la gestion scolaire. En général, les tribunaux reconnaissent le principe suivant : à nombres égaux à la majorité, gestion égale.

F. La limite du nombre suffisant

Les termes « partout dans la province où le nombre [...] est suffisant » imposent une limite aux droits conférés par l'article 23. Il est clairement établi que le territoire sur lequel le regroupement du nombre suffisant doit être effectué ne doit pas subir la contrainte des frontières scolaires actuelles.

Les législatures ou le Conseil des ministres de chaque province doivent établir « les nombres suffisants »; ces décisions ne peuvent demeurer du ressort des autorités locales, notamment

Dans son jugement, le juge Wimmer de la Saskatchewan (1988) a ajouté les mots « parents ou *guardians* » afin de bien signaler que les droits conférés aux parents le sont également aux remplaçants des parents.

B. Le droit à l'instruction

Les tribunaux ont déterminé que le droit à l'instruction ne signifie pas le droit à l'instruction dans des programmes d'*immersion*. Ces programmes desservent la majorité et non la minorité officielle. D'ailleurs, ce sont des programmes de langue seconde et non des programmes de langue desservant la minorité.

L'arrêt dans l'affaire *Mahé et al. c. la reine* (1987) précise que le droit à l'instruction inclut le droit à une *pédagogie efficace*. Les différents aspects suivants sont énumérés :

- l'instruction dans d'autres domaines que la langue;
- un personnel spécialement choisi pour l'enseignement à la minorité;
- la langue d'administration est celle de la minorité;
- l'enseignement dans un milieu isolé de la langue de la majorité;
- les liens étroits entre l'école et les parents;
- la participation de la collectivité aux affaires de l'école.

En d'autres termes, le droit à l'instruction est interprété comme un *droit à une éducation complète*. La cour d'appel de l'Île-du-Prince-Édouard ajoute qu'il faut un matériel adéquat. Enfin, l'instruction dispensée aux minorités doit être financée à même les fonds publics.

C. Le droit à des établissements

Selon les interprétations des tribunaux, le terme « établissement » réfère, en général, à des *écoles* de la minorité établies lorsque le nombre d'élèves de cette minorité est suffisant. Lorsque le nombre est insuffisant, des salles de classe dans des locaux partagés avec la majorité peuvent satisfaire aux droits conférés par l'article 23.

D. Le droit à la gestion

Tous les jugements rendus, sauf l'arrêt dans le *Renvoi constitutionnel du Manitoba*, reconnaissent que le paragraphe 23(3) fait état d'un droit de gestion pour les minorités de langue officielle.

L'argument principal retenu par les cours pour justifier le droit de gestion est celui du *préjudice historique subi par les minorités* privées du contrôle de leur éducation. Sans contrôle de l'éducation, elles sont soumises aux décisions d'une majorité parfois insensible. La gestion est importante pour les minorités qui veulent atteindre l'objectif visé : l'épanouissement de la communauté minoritaire. Lorsque les minorités subissent l'influence de la majorité et de ses décisions, elles perdent une partie de leur identité culturelle et linguistique.

L'arrêt de la cour d'appel dans l'affaire *Mahe et al.* (1987) et le jugement de la cour du banc de la reine de la Saskatchewan (1988) interprètent l'article 23 comme étant un *compromis politique* exigeant une interprétation restreinte de la part des tribunaux plutôt qu'une interprétation large et généreuse.

Les jugements de l'Île-du-Prince-Édouard (1988) tentent de *réconcilier* une *interprétation généreuse* et les contraintes sur les droits qu'entraîne un *compromis politique*; ils croient nécessaire de protéger la compétence provinciale en matière d'éducation.

Enfin, le jugement de la cour d'appel de la Nouvelle-Écosse reprend une interprétation *large et libérale* de l'article 23. Il établit une distinction entre cet article et les articles 16 à 22 sur les droits linguistiques qui, contrairement à l'article 23, sont le fruit de compromis politiques.

A. Les bénéficiaires des droits

Toute personne, pour être admissible aux droits conférés par l'article 23, doit répondre *obligatoirement* aux trois critères généraux suivants :

- être citoyen canadien;
- résider dans une province canadienne;
- être parent d'enfant(s) du primaire ou du secondaire.

De plus, l'admissibilité est conférée par *un* des trois critères linguistiques suivants :

- la première langue apprise et encore comprise par le parent est celle de la minorité;
- la langue d'instruction primaire du parent est celle de la minorité;
- la langue d'instruction d'un enfant de la famille est celle de la minorité.

Les tribunaux ont appliqué, tel que décrits ci-haut, les critères de l'article 23. Quelques précisions ont été apportées au Québec, en Ontario et en Saskatchewan.

La Cour suprême du Canada (1984), en remplaçant le territoire du Québec (clause-Québec) par celui du Canada (clause-Canada), a défini la minorité admissible aux droits conférés par l'article 23 comme étant celle de tout le territoire canadien pour tout anglophone désirant résider au Québec.

La cour d'appel de l'Ontario (1984) a indiqué que la *Charte n'exige pas* que les enfants, pour avoir droit à l'instruction en français en Ontario, soient eux-mêmes *francophones*.

Dans le *Renvoi sur les droits scolaires à l'Île-du-Prince-Édouard*, la cour a confirmé que les droits sont conférés aux *parents* et non aux enfants.

En 1982, l'article 23 visait trois objectifs :

favoriser l'établissement, dans toutes les régions du pays, d'un régime uniforme (semblable) permettant non seulement le maintien mais l'épanouissement des minorités de langue officielle;

réformer les situations historiques causées par l'assimilation;

consolider l'unité nationale en diminuant une bipolarisation croissante des deux grandes collectivités linguistiques (française et anglaise).

L'article 23 vient donc confirmer le rôle primordial que joue l'éducation pour l'épanouissement des minorités de langue officielle.

B. Les objectifs depuis l'avènement de la Charte

Les jugements rendus par les tribunaux depuis 1982 ont confirmé les objectifs de l'article 23 en voulant favoriser, en général, la mise en vigueur de mesures qui permettent l'épanouissement des minorités de langue officielle.

II. L'INTERPRÉTATION DE L'ARTICLE 23 PAR LES TRIBUNAUX

Depuis 1982, des jugements ont été rendus dans dix causes dans toutes les régions du pays. Voici la répartition des 13 procédures judiciaires en niveaux de cour : six sont de première instance, six sont de cours d'appel provinciales — dont trois sont des renvois constitutionnels — et une est de la Cour suprême du Canada. Les tribunaux ont tout d'abord préconisé une interprétation large et libérale des droits conférés par l'article 23, pour en donner plus tard une interprétation restreinte et revenir, en 1989, à une interprétation large et libérale.

En 1984, le jugement de la Cour suprême du Canada (*Quebec Association of Protestant School Boards c. P.G. du Québec*) adoptait une interprétation large et généreuse de l'article 23 en fonction de son objectif fondamental : remédier à un régime déficient afin d'assurer l'épanouissement des minorités de langue officielle. Deux autres jugements de la Cour suprême sur d'autres articles de la Charte ont renforcé l'orientation d'une interprétation large et généreuse. Les jugements provinciaux, avant 1986, se sont inspirés de cette interprétation.

Le jugement de la Cour suprême du Canada dans l'affaire *Société des Acadiciens et al. c. Minority Language School Board no. 50 et al.* (1986) ne portait pas sur l'article 23, mais il s'est arrêté tout particulièrement aux compromis politiques faits lors de l'établissement des droits linguistiques dans la Charte (articles 16 à 22). Il met l'accent sur l'autorité provinciale. Ce jugement a favorisé une interprétation restreinte des droits par les jugements subséquemment rendus sur l'article 23.

Québec (1984), en faisant reconnaître, entre autres choses, que les critères d'admissibilité de la *Charte canadienne* ont préséance sur la loi du Québec. En 1987, l'association Bugnet a soumis, au nom des francophones de l'Alberta, sa cause devant la Cour suprême du Canada dans l'affaire *Mahé et al. c. la reine*.

En outre, les tribunaux ont reconnu l'importance de la mise en vigueur de moyens efficaces pour permettre l'épanouissement des minorités de langue officielle. Parmi ces moyens, mentionnons : le regroupement de la minorité selon des critères d'admissibilité aux droits, l'instruction dans la langue de la minorité, la formation d'établissements homogènes distincts, la gestion par la minorité de ses établissements d'enseignement et enfin l'égalité dans la qualité des services. Ces moyens découlent directement du texte de l'article 23 autant que des mesures d'application qui doivent respecter l'esprit de cet article. En reconnaissant la légitimité de ces moyens et en les interprétant en tant que droits constitutionnels, les tribunaux donnent à l'article 23 une orientation visant à protéger les minorités de langue officielle du Canada.

Les aspects déterminants de l'article 23 ayant été clairement exposés dans ce chapitre, nous nous fonderons sur ces données pour procéder, dans les sections subséquentes de ce document, à l'étude de la situation actuelle et virtuelle de la concrétisation des droits conférés.

IV. RÉSUMÉ

I. LES OBJECTIFS DE L'ARTICLE 23 DE LA CHARTE

A. *Historique jusqu'en 1982*

La description historique des origines de l'article 23 de la *Charte* permet d'en établir les objectifs.

L'article 93 de la *Loi constitutionnelle de 1867* avait entériné les droits des minorités religieuses à des écoles et à leur gestion. Ces dispositions protégeaient alors, de fait, le caractère linguistique de ces minorités. Cinq provinces canadiennes conservent ces droits confessionnels : le Québec, l'Ontario, la Saskatchewan, l'Alberta et Terre-Neuve. C'est donc dans le contexte des droits confessionnels de certaines provinces que s'insère l'article 23.

L'article 23 tire ses origines du *Rapport sur l'éducation* de la Commission royale d'enquête sur le bilinguisme et le biculturalisme (1968). Les objectifs visés étaient alors :

permettre un apprentissage efficace de la langue minoritaire; et

fournir, par l'école, un milieu de promotion sociale et culturelle permettant l'épanouissement des minorités de langue officielle.

- la possibilité de fournir des installations d'hébergement aux élèves admissibles;
- les répercussions de ces dispositions sur le développement social de l'enfant;
- les coûts. (p. 45)

Depuis 1985, la plupart des tribunaux ont en effet considéré les coûts comme une autre variable touchant les décisions portant sur les nombres suffrisants.

Le critère du nombre suffrisant est extrêmement important quant au respect des droits des minorités de langue officielle. Il est évidemment impossible, selon les jugements, d'établir un ou des nombres à l'échelle nationale. Chaque province doit se pencher sur la question. Le nombre semble toutefois assujéti à diverses interprétations possibles par les autorités provinciales. Les cours hésitent à s'ingérer dans les domaines de compétence provinciale. Elles tentent pour l'instant de donner des lignes directrices qui permettraient une interprétation du terme « nombre suffrisant » conforme à l'objectif visé par l'article 23.

Aux fins d'analyse au Chapitre II, nous retenons le paramètre des ayants droit en ce qui a trait au nombre suffrisant tel qu'il a été établi par la cour d'appel de l'Ontario. En comparant statistiquement la reconnaissance actuelle des droits à l'instruction (inscriptions) avec la reconnaissance virtuelle de cette instruction en vertu des ayants droit, nous espérons contribuer à la concrétisation de l'article 23 et favoriser l'émergence d'un dénominateur moyen, entre ces deux nombres, vers lequel tendrait les prévisions d'offres de services.

III. CONCLUSIONS

Historiquement, l'article 23 avait pour objectif global d'assurer l'épanouissement des minorités de langue officielle. Cet épanouissement devait passer par deux voies complémentaires : 1) la réparation d'une situation historique d'assimilation par l'établissement d'un régime uniforme de mesures éducatives pour les minorités de langue officielle dans toutes les régions du Canada et 2) la mise en vigueur d'un système efficace d'instruction et de gestion tout en notant bien que ce système restait à définir. Qu'en est-il après plus de huit années d'interprétations judiciaires ?

Les jugements rendus se sont tous portés garants de l'autorité provinciale en matière d'éducation. C'est avec prudence qu'ils tentent d'indiquer aux minorités et aux majorités la voie à suivre sans léser les prérogatives des gouvernements provinciaux. Dans ce chapitre, nous avons vu comment les mesures en cause peuvent se heurter à un domaine de compétence essentiellement provincial, soit l'éducation. Les cours de première et de deuxième instances ont été davantage les protectrices de cette autorité provinciale, tout en demandant parfois avec vigueur que les législatures passent à l'action.

Cependant, la minorité anglophone du Québec a obtenu gain de cause auprès du plus haut tribunal du pays, dans l'affaire *Quebec Association of Protestant School Boards c. P.G. du*

l'instruction alors que le deuxième toucherait le droit aux établissements scolaires et serait plus élevé. C'est ainsi que, dans les affaires *Reference re Education Act* (1984), *Mahe et al.* (1985), *Renvoi sur les droits scolaires à l'Île-du-Prince-Édouard* (1988), *Commission des écoles fransaskoises et al. c. P.G. de la Saskatchewan* (1988) et *Laurent Lavoie et al.* (1989), on estime que le nombre suffisant pour établir le droit à l'instruction, conformément à l'alinéa 23(3)a), est moindre que celui relatif au droit à des établissements énoncé à l'alinéa 23(3)b). Il est donc loisible de croire qu'un nombre justifie l'instruction et qu'un autre justifie l'établissement d'écoles et leur gestion.

Les jugements rendus dans l'affaire *Laurent Lavoie et al.* abordent principalement la question du nombre suffisant. En cour d'appel de la Nouvelle-Écosse (1989), le nombre de 49 élèves inscrits a été jugé suffisant pour donner droit à l'instruction mais insuffisant pour accorder le droit à un établissement séparé. Selon la cour, les coûts occasionnés auraient été excessifs.

Le nombre suffisant étant donc soumis à des interprétations très différentes, les juges se sont aussi demandé quelles instances devaient légitimement en décider. Il s'agit là du troisième aspect de la question. Il est acquis aujourd'hui que cette prérogative ne peut être laissée aux autorités scolaires locales. Pour la cour d'appel de l'Ontario, seules les législatures sont habilitées à établir un nombre minimum. Elle note :

Puisque le critère du nombre doit être appliqué dans la province selon le contexte local, toute limite qui serait fixée arbitrairement et s'appliquerait dans toute la province sans restriction ou exemption serait difficilement justifiable. Les nombres fixés ne seront pas toujours immuables. Ils peuvent varier selon les régions géographiques et selon la nature de l'enseignement qui est dispensé. (p. 51)

Non seulement les législatures doivent établir les nombres suffisants selon les circonstances locales, mais elles doivent également justifier ces nombres par des critères adéquats. La cour d'appel de l'Île-du-Prince-Édouard a elle aussi émis l'opinion que la législation ou le lieutenant-gouverneur en conseil (le Conseil des ministres) est bien placé pour établir les nombres suffisants. La cour d'appel du Manitoba, pour sa part, est également d'avis que les commissions scolaires ne sont pas aptes à juger des nombres suffisants; les juges invoquent majoritairement la possibilité de créer un organisme indépendant pour disposer de cette question.

Certains jugements offrent des suggestions dont peuvent s'inspirer les législatures afin d'établir les nombres suffisants. Pour l'Ontario, les autorités provinciales doivent s'assurer que les nombres ne sont pas fixes et immuables. Le juge Purvis de l'Alberta (1985) estime, pour sa part, que les facteurs suivants peuvent compter dans l'établissement des nombres suffisants :

- la distance que doit parcourir un élève et le temps que prend le transport;
- l'âge des enfants;

F. LA LIMITE DU NOMBRE SUFFISANT

La question du nombre suffisant est la plus épineuse et la plus controversée puisqu'elle impose une limite explicite aux droits conférés par l'article 23. Elle apparaît d'ailleurs à deux reprises dans le texte, soit aux alinéas (3)a) et (3)b). Les droits à l'instruction (3)a) et aux établissements (3)b) s'exercent « partout dans la province où le nombre des enfants des citoyens qui ont ce droit est suffisant pour justifier [...] la prestation [de ces services à même] les fonds publics ». Les jugements ont clarifié certains aspects de cette limitation, mais d'autres facettes demeurent controversées.

Tout d'abord, il a été clairement établi que le territoire sur lequel le calcul du nombre suffisant doit être effectué ne se limite pas aux frontières des commissions scolaires actuelles. Les droits conférés par l'article 23, estime la cour d'appel de l'Ontario, transcendent les frontières géographiques des commissions scolaires. Le jugement de la cour du banc de la reine de l'Alberta (1985), celui de la Saskatchewan (1988) et les arrêts des cours d'appel de l'Île-du-Prince-Édouard (1988) et du Manitoba (1990) ont également conclu que le calcul du nombre suffisant ne doit pas se restreindre aux frontières actuelles des commissions scolaires puisque deux groupes de parents appartenant à deux commissions scolaires limitrophes pourraient, ensemble, représenter un nombre suffisant pour justifier la création d'une école pour la minorité. Cette exigence de flexibilité se comprend si l'on songe, notamment, que toutes les provinces ont connu, au cours de leur histoire, des réorganisations scolaires qui ont touché le nombre de commissions scolaires. Les frontières de ces commissions ne sont donc pas immuables.

Un deuxième aspect à considérer est le suivant : le nombre suffisant doit-il se calculer à partir du nombre d'enfants de parents admissibles (les ayants droit constitués en fonction des bénéficiaires) ou bien à partir du nombre réel d'enfants dont les parents bénéficiaires veulent se prévaloir du droit à l'instruction dans la langue de la minorité ? Il s'agit d'une question fondamentale qui détermine deux calculs différents. À ce sujet, la cour d'appel de l'Ontario s'est clairement prononcée : il s'agit de la clientèle admissible en vertu de l'article 23. Cette cour inclut donc dans la notion du « nombre suffisant » les ayants droit désignés à l'article 23; ces ayants droit constituent une clientèle éventuelle des services éducatifs¹⁵.

Cependant, le discours s'est graduellement transformé. Lorsque les juges Purvis (1985) et Wimmer (1988) parlent du nombre d'enfants admissibles, ils se réfèrent en réalité au nombre d'enfants déjà inscrits aux programmes de la minorité. Les jugements de l'Île-du-Prince-Édouard (1988) et de la Nouvelle-Écosse (1988)¹⁶ estiment qu'il serait illogique et illusoire d'offrir des services sans avoir à démontrer que le nombre d'enfants désirant s'inscrire le justifie. Ainsi, « nombre suffisant » est ici interprété comme le nombre effectif d'enfants inscrits ou signifiant leur désir d'inscription; ces interprétations sont plus conservatrices que celle adoptée dans le jugement de l'Ontario.

En revanche, cinq jugements sont en faveur d'un double critère pour déterminer le nombre suffisant. Le premier critère satisfaisant un nombre moindre accorderait un droit à

égard. La cour d'appel de l'Alberta, tout en admettant les droits à l'égalité en matière d'instruction, refuse pourtant d'octroyer un système égal à celui de la majorité. Même s'il reconnaît le principe du droit complet à la gestion par un système parallèle à celui de la majorité, le juge Kerans note que la minorité, par son statut même, ne peut atteindre un nombre suffisant pour revendiquer un système parallèle. Il affirme en effet :

[...] l'article 15 prescrit que les enfants admissibles en vertu de l'article 23 ne devraient pas être également victimes. Ils devraient recevoir une même bonne instruction que les autres enfants ainsi qu'une véritable instruction dans la langue de leur minorité. (p. 68)

Il est affirmé que la minorité francophone et la majorité anglophone « se trouvent dans la même situation » et qu'elles ne sont pas traitées de façon semblable. J'avoue que je trouve cet argument quasiment impossible à suivre. La simple raison est que la « majorité » et la « minorité », n'étant pas dans la même situation, peuvent être traitées différemment. (p.62)

Le juge conclut donc qu'égalité ne signifie pas l'instauration d'un système d'éducation complet pour la minorité. Il accorde l'égalité d'instruction, mais non l'égalité de gestion. Les juges de l'Île-du-Prince-Édouard et de la Saskatchewan ont, par la suite, adopté une attitude plus nuancée. Quand les nombres sont égaux à ceux de la majorité, les services devraient être équivalents (la minorité n'est donc plus considérée comme une minorité). Il faut noter en outre, disent-ils, que les services de la majorité sont sujets à des variations :

There can be no question that where s. 23 rights become effective the quality of education to be provided to the minority should be equal to that provided to the majority, taking into consideration the varying degrees of education received by the majority. (Île-du-Prince-Édouard, 1988, p. 59)

Par conséquent, la qualité des services offerts à la majorité elle-même étant variable, celle des services offerts à la minorité le sera donc également. Le juge McQuaid de l'Île-du-Prince-Édouard précise même, dans un ajout à l'arrêt dans le *Renvoi*, que la minorité possède des droits égaux mais non supérieurs à ceux de la majorité. Quant au juge Wimmer de la Saskatchewan, il souligne qu'il n'est pas toujours possible d'offrir des services égaux à ceux de la majorité, les coûts pouvant être prohibitifs.

En somme, la plupart des juges se prononcent en faveur du droit à l'égalité des services d'enseignement, mais soulignent que la question du nombre suffisant doit être considérée et que la qualité des services peut varier d'une région à l'autre. Cependant, ils acceptent moins unanimement l'égalité de gestion. Le nombre suffisant joue, là encore, un rôle déterminant dans la mesure où la minorité n'atteint pas, comme la majorité, le nombre suffisant. Voyons donc maintenant, plus en profondeur, la question du nombre suffisant.

Le principe d'égalité des services a été un sujet de préoccupation dès l'établissement des droits des minorités de langue officielle. Dans son document proposant la réforme constitutionnelle, *Le temps d'agir* (1978), le gouvernement fédéral établit ceci :

Le renouvellement de la fédération doit garantir l'égalité linguistique de ses deux grandes collectivités, l'anglophone et la francophone, et assurer que les institutions canadiennes existent pour favoriser l'épanouissement de chacune. (p. 10)

L'égalité des communautés linguistiques étant au cœur de la nouvelle constitution, les cours de justice ont toutes affirmé être en accord avec ce principe : les minorités de langue officielle ont le droit à une éducation équivalente à celle de la majorité. Ceci dit, cependant, les interprétations varient.

La cour d'appel de l'Ontario (1984) se prononce clairement :

La qualité d'instruction dispensée à la minorité doit être de même qualité que celle dispensée à la majorité. (p. 75)

Les droits des minorités linguistiques devraient être établis par des lois générales garantissant à tous un traitement égal et juste plutôt que par contestation judiciaire. (p. 106)

Ces citations apportent trois dimensions reconsidérées par la suite à l'occasion d'autres jugements. Tout d'abord, égalité, en termes concrets, se réfère à la qualité des services. Le point de référence demeure la qualité des services offerts à la majorité. Sur ce point, le juge Strois, dans l'affaire *Marchand* (1986), rend un jugement précis :

This means the same education as is given the majority but in the other official language. This is to be a full and complete education not a limited, partial or truncated one, which necessarily would be an inferior education, a second class one. (p. 38)

Le principe d'égalité s'applique donc à la qualité des services éducatifs, lorsqu'on a satisfait à l'exigence du nombre suffisant.

La deuxième dimension apportée par la cour d'appel de l'Ontario concerne la procédure par laquelle l'égalité doit être assurée. La cour stipule en effet qu'il appartenait aux législateurs d'établir des lois justes et équitables pour les minorités. Ces dernières ne devaient pas avoir à revendiquer leurs droits devant les tribunaux. La cour prône donc un traitement des minorités qui est pro-actif plutôt que défensif.

La troisième dimension touche la nature de l'égalité. Les cours de l'Ontario (*Renvoi et Marchand*) se réfèrent directement à l'instruction et reconnaissent l'égalité nécessaire à cet

à cette minorité porterait atteinte à l'autonomie du gouvernement de cette province en matière d'éducation.

Dans le même renvoi, le juge Monnin, pour sa part, conclut que le droit de gestion n'est pas accordé explicitement par l'article 23, même s'il est souhaitable. Toutefois, les droits conférés par l'article 15 ayant été violés, « la formation d'une division ou d'un district scolaire provincial unique, soit par la création de divisions ou de districts scolaires multiples, soit par toute autre méthode appropriée » (p. 77), accordant ainsi aux minorités le droit à la gestion scolaire, pourrait constituer un redressement viable.

Qui sont les bénéficiaires du droit de gestion ? La cour d'appel de l'Ontario précise que l'exercice du droit de gestion par la minorité revient à « tous les parents qui ont droit à la protection accordée aux termes de l'article 23 ainsi [qu'] à ceux qui bénéficient de ce droit sans satisfaire aux dispositions de l'article » (p. 73). D'un autre côté, selon la cour d'appel de l'Alberta, la cour du banc de la reine de la Saskatchewan et la cour d'appel de l'Île-du-Prince-Édouard, tous les membres de la communauté minoritaire peuvent prétendre au droit de gestion. Dans le premier cas, on indique que les droits sont conférés aux *parents*; dans le deuxième, ils sont conférés à tous les membres de la communauté minoritaire, parents ou non¹⁴.

Tous les jugements insistent finalement sur la compétence provinciale en ce qui a trait au respect du droit à la gestion scolaire. Chaque province ou territoire doit décider des moyens ou des modalités les plus appropriées à sa situation particulière. Or, le droit de gestion requiert une réorganisation du système scolaire et exerce, par cette obligation même, des pressions sur les législatures provinciales. La question du droit de gestion vient donc opposer deux perspectives dans l'application de l'article 23 : la situation historique à réformer et l'épanouissement futur des minorités de langue officielle, d'une part; les pouvoirs exclusifs en matière d'éducation des gouvernements provinciaux, d'autre part.

Ce cadre jurisprudentiel sur la gestion scolaire et les objectifs visés par l'article 23 a notamment servi de point de départ à la grille d'analyse des modèles de gestion scolaire (actuels et proposés) destinés aux minorités de langue officielle proposée aux chapitres III et IV. Nous y présentons un seuil d'efficacité pour la mise en œuvre d'un système de gestion scolaire par ces minorités, seuil qui tient compte des difficultés susmentionnées, à savoir le respect de l'autonomie provinciale en matière d'éducation et l'épanouissement des minorités de langue officielle. Il inclut également les éléments qui doivent essentiellement être soumis au contrôle de la minorité.

E. L'ÉGALITÉ DES SERVICES

Les droits conférés par l'article 23 incitent à élucider une question fondamentale : l'égalité de services avec ceux de la majorité. Cette question, sans être évoquée explicitement dans le texte de l'article 23, porte notamment sur l'application des droits et sur son interprétation en concordance avec l'article 15 de la Charte.

contrôle doit être accordé à la minorité quant aux programmes et aux établissements. Il précise également les domaines exclusifs de décisions ci-haut notés, qu'il reprend du jugement de l'Ontario (p. 54).

La cour d'appel de l'Alberta, à qui on demandait si la minorité francophone a droit à un système d'éducation complet comme celui de la majorité, a répondu par l'affirmative :

À mon avis, l'alinéa 23(3)b) garantit aux élèves admissibles en vertu de l'article 23, lorsque leur nombre le justifie, un système éducationnel (avec toute sa complexité et ses coûts) qui leur offre non seulement la même qualité d'enseignement que les autres systèmes mais qui est dirigé par le groupe de la minorité linguistique ou ses représentants. (p. 44)

Il revient cependant à la province de décider des modalités permettant d'assurer le respect de ce droit puisqu'il s'agit, selon la cour, d'un droit politique. D'ailleurs, cette dernière conclut que « le nombre » en Alberta est insuffisant pour fournir un système de gestion complet au même titre que celui de la majorité.

La question posée à la cour d'appel de l'Île-du-Prince-Édouard cherchait à confirmer le droit de participation de la minorité à l'élaboration et à la prestation des programmes. Reconnaissant cependant qu'il est plus facile de répondre à cette question qu'à celle posée à l'Ontario et qui portait sur le droit de contrôle plutôt que sur le droit de participation, elle conclut par l'affirmative, arguant que le droit de participation repose bel et bien sur les alinéas 23(3)a), dans le cas de l'Instruction, et 23(3)b) dans le cas d'écoles.

Par contre, le juge Wimmer de la Saskatchewan estime que le droit de gestion n'est conféré qu'aux établissements séparés et autonomes. Si l'Instruction est dispensée dans des classes partagées, aucun droit particulier de gestion n'est conféré à la minorité qui doit alors se contenter de comités consultatifs.

Lors du *Renvoi constitutionnel en cour d'appel du Manitoba* (1990), les cinq juges s'accordent sur cette seule conclusion : l'article 23 n'accorde pas de droit à la gestion scolaire, ni explicitement dans la lettre, ni implicitement dans l'esprit. Les juges ont exclu la possibilité du droit au contrôle partiel de la gestion. Ceci est clairement exprimé par le juge Tawdle, qui, appuyé par le juge Philip, déclare :

A transfer of the right of governance from the province as a whole to those of its linguistic minority would constitute a massive intrusion into provincial autonomy in the field of education. So massive would that intrusion be that I would expect to find it made by a constitutional amendment expressed in much clearer language than that found in section 23. (p. 39)

Le juge Tawdle a ainsi placé la minorité de langue officielle sur un pied d'égalité avec le gouvernement de la province du Manitoba; il conclut donc qu'accorder un droit de gestion

the sole control of the program development and delivery with the English majority. If such were the case, a majority language group could soon wreak havoc upon the rights of the minority and could soon render such a right worthless. (p. 53)

En des termes différents, le juge Kerans de l'Alberta accepte l'argument des demandeurs, à l'effet que :

La garantie la plus efficace contre l'assimilation est un établissement contrôlé exclusivement par ce groupe. Toute réduction de ce pouvoir atténue inévitablement le caractère exceptionnel de l'école et l'assujettit à l'influence d'une majorité insensible sinon hostile. Il ne fait aucun doute qu'il faut céder certains éléments de contrôle, comme nous le verrons, mais chaque mesure de contrôle perdue représente un affaiblissement éventuel du pouvoir décisionnel qui peut contribuer à l'affaiblissement du rôle difficile de l'établissement. (p. 44)

Ces citations montrent que l'efficacité des établissements de la minorité, conformément à l'objectif établi par l'article 23, exige que la minorité elle-même ait la haute main sur les établissements d'enseignement.

Cependant, les cours ne sont pas toutes d'accord sur l'étendue du droit de gestion. Au regard des questions qui leur sont soumises, il existe des variations importantes dans l'interprétation qu'elles ont donnée à ce droit.

La minorité a-t-elle le droit de gérer et de contrôler ses classes et ses établissements d'enseignement ? Ayant répondu à cette question par l'affirmative, la cour d'appel de l'Ontario spécifie que le droit de gestion accordé par le *Livre blanc* proposant des amendements à la *Loi sur l'éducation* (1983) de l'Ontario semble conforme à l'article 23 en ce qu'il fournit à la minorité une représentation garantie au sein des commissions scolaires locales et lui octroie un pouvoir exclusif sur les classes ou les écoles de la minorité, c'est-à-dire sur les aspects de caractère français. Elle énumère notamment les pouvoirs décisionnels suivants, tels que détaillés dans le *Livre blanc* :

- l'affectation des fonds prévus pour l'enseignement et les établissements;
- la nomination et la direction des personnes responsables de l'administration;
- la création de programmes d'enseignement;
- le recrutement et l'affectation des enseignants et du personnel scolaire;
- les accords relatifs aux programmes et aux services.

La cour met aussi l'accent sur la responsabilité provinciale quant au respect du droit de gestion.

Le juge Purvis de la cour du banc de la reine de l'Alberta dans l'affaire *Mahe et al.* (1985) déclare, à l'instar de la cour d'appel de l'Ontario, qu'un certain degré de gestion et de

territoire. Nous juxtaposons les effectifs des écoles homogènes [alinéa 23(3)b)], lorsque le nombre le justifie, à ceux inscrits dans tous les programmes d'instruction à la minorité [alinéa 23(3)a)]. Ainsi, nous brosons un tableau statistique des services offerts en vertu de ces deux alinéas de l'article 23.

Nous ne pouvons considérer plus longuement les caractéristiques des termes « établissements d'enseignement de la minorité linguistique » sans procéder à une analyse de son deuxième aspect : la gestion.

D. LE DROIT À LA GESTION

Depuis le jugement de la cour d'appel de l'Ontario, il était généralement reconnu que le sens français des termes « établissements d'enseignement de la minorité linguistique » énoncés à l'alinéa 23(3)b) est plus large que celui que leur donne l'anglais : « *minority language educational facilities* ». D'abord, les particules « de la » indiquent que les établissements appartiennent à la minorité. Ensuite, la distinction que fait l'article 23 entre « instruction » et « établissement » laisse à entendre que ce dernier doit signifier non seulement l'attribution d'établissements physiques, mais également le droit à la gestion de ces établissements. L'article 23 accorde donc, implicitement, aux minorités de langue officielle le droit de gérer leurs établissements d'enseignement. D'ailleurs, comme le notait Foucher en 1988, « Aucun jugement n'a encore refusé de lire à l'article 23 un droit de gestion. » (p. 23). Toutefois, en 1990, la cour d'appel du Manitoba n'est pas de cet avis.

Mais voyons tout d'abord les jugements rendus avant 1990.

Les doléances des minorités envers les commissions scolaires¹³ majoritaires notées par les cours de l'Ontario, de la Saskatchewan et de l'Île-du-Prince-Édouard, fournissent un argument fondamental en faveur du droit à la gestion scolaire. La cour d'appel de l'Ontario, par exemple, attribue à une suite d'événements malheureux « l'absence d'une véritable participation de la minorité francophone à la gestion et au contrôle des conseils scolaires locaux » (p. 70). Elle signale :

Les documents présentés à l'appui [...] démontrent que [...] les collectivités francophones de l'Ontario ont demandé à maintes reprises à leur conseil scolaire local de leur fournir leurs propres écoles et que ce droit leur a été refusé. (p. 41)

L'argument retenu par les cours porte donc sur la réparation d'une situation historique favorisée, de l'avis de la cour d'appel de l'Ontario, par les commissions scolaires majoritaires. Un deuxième argument touche la raison intrinsèque d'accorder aux minorités le droit à la gestion scolaire : c'est là la meilleure garantie contre l'assimilation. Deux arrêts se sont penchés sur la question. Nous les citons textuellement. La cour d'appel de l'Île-du-Prince-Édouard fait remarquer que :

It would be foolhardy to assume that Parliament intended to give the French linguistic minority the right to receive their instruction in French but leave

Cependant, la question ne peut être tranchée aussi facilement. De l'avis du juge Kerans de la cour d'appel de l'Alberta, par exemple, il existe plusieurs variantes : classe, école, bâtiment séparé, administration, système provincial, etc.

En outre, comme le note la cour d'appel de l'Ontario, l'instruction doit nécessairement être offerte dans un endroit physique distinct, dans des écoles homogènes. Sous réserve du nombre suffisant, on peut donc interpréter « établissement » comme désignant une école distincte de celle instruisant la majorité. C'est également ainsi que l'ont interprété les cours de l'Ontario (1984), de l'Alberta (1985), de la Nouvelle-Écosse (1988, 1989), de la Saskatchewan (1988), de l'Île-du-Prince-Édouard (1988) et du Manitoba (Monnin, 1990). Précisons que ces cours ont encore confirmé que si des établissements séparés sont nécessaires lorsque le nombre le justifie, les établissements partagés (les classes dans des écoles de la majorité) peuvent également satisfaire, en présence de nombres restreints, aux droits conférés par l'article 23.

Le caractère distinct des établissements de la minorité est précisé par la cour d'appel de l'Ontario (1984) :

l'environnement scolaire sera celui de la minorité linguistique. C'est seulement dans ce cas que l'on sera justifié de dire que les établissements reflètent la culture de la minorité et qu'ils sont propres à cette minorité. (p. 66)

Un dernier point touche l'homogénéité linguistique de ces écoles. D'une part, les élèves des établissements de la minorité, choisis à partir des critères d'admissibilité de l'article 23 et appartenant à la minorité par leurs parents ou leurs frères et sœurs, ne parlent pas nécessairement avec la même aisance la langue de cette minorité. C'est ce que reconnaissent la cour d'appel de l'Ontario (1984), celle du banc de la reine de la Saskatchewan (1988) ainsi que la cour d'appel de l'Île-du-Prince-Édouard (1988). D'autre part, le juge Richard de la cour du banc de la reine dans l'affaire *SANB c. Minority Language School Board no. 50 et al.* (1983), confirme que l'école mixte, dite « bilingue » (regroupant les enfants de la majorité et ceux de la minorité sous une même administration), ne peut satisfaire à l'objectif visé par l'article 23 :

L'école bilingue, dans le contexte de la province du Nouveau-Brunswick, a conduit un grand nombre d'enfants, surtout francophones mais aussi anglophones, à l'assimilation, d'une part, et à l'appauvrissement de la langue maternelle ou dominante, d'autre part, en produisant un « mélange dialectal » propre aux colonisés ou aux assimilés. (p. 381)

Il préconise donc un réseau d'écoles homogènes par leur appartenance à la minorité, afin de répondre à l'objectif de l'article 23 et d'enrayer l'assimilation.

L'interprétation de l'expression « établissements d'enseignement de la minorité » comme étant une école homogène lorsque le nombre est suffisant nous mène à étudier plus particulièrement, au Chapitre II, l'importance de ce type d'école dans chaque province et

“[...] *minority language instruction must imply the right to participate in program development and delivery* [...]” (p. 53)

La cour d'appel de la Nouvelle-Écosse (1989) a elle aussi énoncé que le droit à l'instruction comprend au minimum : enseignants, salles de classe, manuels, fournitures, équipement audiovisuel, etc.

Comme les cours l'ont précisé, le terme « instruction » se distingue nettement de l'immersion et, afin d'atteindre l'objectif visé, englobe un ensemble de moyens pédagogiques et administratifs incluant ressources humaines et physiques. Cependant, la cour d'appel de l'Île-du-Prince-Édouard (1988) hésite à déterminer plus précisément les normes requises pour répondre au droit à l'instruction. Selon elle, il s'agit là d'un domaine qui demeure du ressort des législatures provinciales.

Enfin, il est explicitement précisé dans le texte de l'article 23 que l'instruction à la minorité doit être financée par les fonds publics. Les tribunaux n'ont pas encore eu à se pencher sur cette question. Toutefois, tant la lettre que l'esprit de l'article 23 visent à fournir des programmes d'instruction subventionnés par l'État, au même titre que ceux destinés à la

majorité.

Ces interprétations concernant le droit à l'instruction dans la langue de la minorité délimitent trois autres paramètres qui guident notre étude. Nous retenons, en première analyse, les divers types de programmes d'enseignement destinés à la minorité, excluant les programmes d'immersion mais incluant tous les programmes destinés à la minorité : programmes bilingues, partiels ou complets. Ensuite, l'instruction étant destinée à recouper le primaire et le secondaire, nous retenons les programmes de la 1^{re} à la 12^e année d'étude ou l'équivalent. Ce choix a une incidence sur la tranche d'âge des ayants droit que nous analysons (en l'occurrence, ceux de 6 à 17 ans). De plus, l'instruction doit être financée à même les fonds publics. Cette condition a pour effet de délimiter le type de financement des programmes répondant aux droits conférés par l'article 23. Nous étudions donc, au Chapitre II, les programmes d'enseignement publics offerts à la minorité de langue officielle. Ceux des institutions privées du Québec, qui sont subventionnés jusqu'à 80 p. 100 par les fonds publics, font l'objet d'une étude additionnelle dans la section du Chapitre II portant sur cette province.

C. LE DROIT À DES ÉTABLISSEMENTS

Les termes « établissements d'enseignement de la minorité linguistique » apparaissent à l'alinéa 23(3)b). L'interprétation à donner au mot « établissement » a fait couler beaucoup d'encre parce qu'il désigne un double champ d'application : le premier, dont nous traitons dans la présente section, concerne les établissements physiques (« *physical facilities* »). Le second, présenté dans la prochaine section, se rapporte à la gestion scolaire.

Un consensus assez large se dégage des jugements. On interprète en général « établis-

sement » par « école » lorsque le nombre d'enfants de la minorité est jugé suffisant.

programmes appropriés, et non des programmes d'immersion destinés aux enfants de la majorité, doivent être mis sur pied afin de transmettre les valeurs de la minorité.

Enfin, le jugement établi dans l'affaire *Whittington c. Board of School Trustees of School District no. 63 de Saanich* en Colombie-Britannique (1987) confirme de nouveau que l'article 23 ne donne pas droit aux enfants de la majorité anglophone à des programmes d'immersion française.

Par ailleurs, la cour d'appel de l'Ontario (1984) note qu'« instruction » doit comprendre, « hormis les enseignants et le matériel scolaire nécessaires, soit des salles de classe soit d'autre équipement, comme la télévision, pour dispenser cet enseignement ». L'arrêt de la cour d'appel de l'Alberta (1987) a également contribué à déterminer si « instruction » à l'alinéa 23(3a) comporte un sens plus large que le simple choix de la langue d'enseignement. C'est en fonction de l'objectif visé par l'article 23, tel qu'interprété dans son contexte historique et politique (parler couramment la langue et participer activement à la vie communautaire de la minorité), que cet arrêt parle d'instruction efficace (« véritable »). L'instruction, note-t-on dans l'arrêt, doit notamment répondre aux exigences suivantes :

- être plus qu'un simple cours de conversation en français;
- utiliser les compétences particulières d'un personnel trilingue;
- offrir des programmes en français dans d'autres domaines;
- l'administration doit se faire française;
- assurer l'enseignement dans un milieu isolé de la langue de la majorité;
- établir des liens étroits avec les parents et les établissements francophones;
- locaux;
- favoriser la participation éventuelle aux affaires de l'école. (p. 39-40)

En somme, la cour interprète le droit à l'instruction comme étant le droit à une éducation complète par et pour la minorité : « En outre, ce droit à l'instruction dans la langue ne doit pas se faire au détriment de l'enseignement d'autres matières » (p. 40). Le juge Kerans cite ici le juge Sirois (1986) dans l'affaire *Marchand* (Ontario); l'article 23 offre la garantie d'une éducation complète, et non d'une éducation « inférieure » ni « secondaire ». En interprétant le terme « instruction » en fonction de l'objectif de l'article 23, la cour d'appel de l'Alberta établit donc un lien direct entre l'application de l'article et son efficacité.

L'arrêt de l'Île-du-Prince-Édouard (1988) maintient cette orientation et, tout en souscrivant à l'interprétation de la cour d'appel de l'Alberta, ajoute qu'instruction signifie également participation à la gestion :

As a minimum those persons entitled to minority language instruction would be entitled to receive that instruction in appropriate accommodations, from teachers fluent in the minority language who have been provided with the appropriate teaching materials. (p. 57)

B. LE DROIT À L'INSTRUCTION

L'article 23 s'intitule « Droits à l'instruction dans la langue de la minorité ». Le titre anglais, pour sa part, reflète un objectif *éducatif* précis et vient compléter, comme il est acquis en jurisprudence, le sens du terme dans l'autre langue officielle : « *Minority Language Educational Rights* ». Le mot *education* est plus large que le terme « instruction » et englobe un ensemble de services à la minorité. Dans l'éventail de ces services, l'instruction joue cependant un rôle prépondérant quant aux droits accordés aux minorités de langue officielle. Il représente un aspect précis des droits, distinct des droits linguistiques et des autres garanties constitutionnelles énoncées dans la *Charte*.

Le droit à l'instruction dans la langue de la minorité est défini aux paragraphes 23(1) et 23(2), en général, et à l'alinéa 23(3)a) en particulier. Le texte de ces articles indique expressément qu'il s'agit d'un droit à l'instruction *primaire* et *secondaire*¹². Pour expliquer la signification de ce droit, nous retrouvons dans le texte les mots suivants : « instruction », « faire instruire » et « enseigner ». En anglais, le texte dit *instruction* et *educational*. Comment les tribunaux ont-ils interprété ces termes ? C'est la question vers laquelle nous nous tournons maintenant.

Le mot « instruction » et ses synonymes, « faire instruire » et « enseigner », font partie du vocabulaire usuel. Aux fins de l'article 23, il est généralement admis que l'instruction doit être dans la langue maternelle. Il ne s'agit donc pas d'un droit à un programme de langue seconde, soit, en l'occurrence, à un programme d'immersion en français ou en anglais (Québec). En effet, quatre jugements précisent qu'instruction « dans la langue de la minorité » ne signifie pas le droit à l'instruction dans des programmes d'immersion ». Lors du premier de ces jugements, le juge Richard, dans l'affaire *SANB c. Minority Language School Board no. 50 et al.* (1983), a expliqué que l'immersion concerne la clientèle de la majorité et non celle de la minorité. Les programmes d'immersion visent une grande compétence (fonctionnelle) de la langue française mais les élèves, à leur entrée, n'ont aucune connaissance pratique de cette langue. Il a d'ailleurs conclu que « Les conseils scolaires ont le pouvoir et le devoir de refuser l'accès à leurs programmes d'immersion aux élèves qui ont déjà une connaissance pratique de la langue destinée à ce programme d'immer- sion » (p. 408).

Dans un second jugement, celui de la cour du banc de la reine de l'Alberta (1985) dans l'affaire *Mahe et al.*, le juge Purvis note la différence entre l'immersion et « *a significant language instructional experience* » pour la minorité francophone. Il affirme que « l'instruction dans la langue de la minorité » est l'instruction dans la langue maternelle (« *French as a primary language* »); cette interprétation rejoint celle du juge Richard du

Nouveau-Brunswick.

De même, la cour d'appel de l'Ontario (1984) a stipulé, lors d'un jugement précédent, que pour ce qui est de la clientèle admissible en vertu de l'article 23, l'instruction n'est pas nécessairement dispensée à des enfants dont le français est la langue maternelle et que des

Québec par celui du Canada, la cour définit la minorité admissible aux droits de l'article 23 comme étant celle de tout le territoire canadien. En pratique, la cour considère que les parents anglophones ayant reçu leur instruction primaire au Canada (clause-Canada) sont admissibles à l'enseignement dans la langue minoritaire anglaise, alors que l'article 73 de la loi 101 ne confère ces droits qu'aux parents ayant reçu leur instruction primaire au Québec (clause-Québec). La même précision fut apportée pour la langue d'instruction d'un frère ou d'une sœur. Enfin, la Cour suprême conclut que « les catégories sont immuables et que leur modification atteindrait la substance même des droits » (p. 512)

La même année (1984), la cour d'appel de l'Ontario précisait un autre aspect de l'article 23, soit la langue maternelle de l'enfant. Elle déclare que les paragraphes 25(2) et 261(2) de la *Loi sur l'éducation* de l'Ontario sont incompatibles avec l'article 23 puisqu'ils se réfèrent à la langue parlée de l'enfant. « On voit que la *Charte* n'exige pas que les enfants, pour avoir droit de recevoir leur instruction en français en Ontario, soient eux-mêmes francophones » (p. 46). Cette précision confirme l'hétérogénéité linguistique des ayants droit et indique que les institutions devront répondre tant aux besoins des enfants parlant déjà la langue de la minorité qu'à ceux qui, ayant été assimilés, parlent la langue de la majorité.

En 1988, dans le *Renvoi sur les droits scolaires à l'Île-du-Prince-Édouard*, la cour confirme de nouveau que les droits sont conférés aux parents et non aux enfants. Enfin, le juge *Wimmer* de la Saskatchewan (1988) ajoute, dans son jugement, les termes « parents ou gardiens » afin de bien indiquer que les droits conférés aux parents le sont également aux remplaçants des parents : *in loco parentis*.

En 1989, le juge *Clarke* de la cour d'appel de la Nouvelle-Écosse adopte une position moyenne en considérant que la *Charte* et les lois provinciales se complètent. Le *Acadian Schools Amendment* n'est pas, selon lui, inconstitutionnel parce qu'il confère des droits aux enfants parlant la langue de la minorité. À son avis, l'amendement vient compléter, avec l'article 23, l'éventail des droits à la minorité : ceux des parents et ceux des enfants.

En 1981, les critères d'admissibilité aux droits conférés par l'article 23 étaient clairs en ce qui a trait à la définition de la langue maternelle. En 1986 toutefois, Statistique Canada ne définit plus la langue maternelle comme étant unique¹⁰. Cette définition ouvre un nouveau débat constitutionnel. Nous savons que les bénéficiaires de l'article 23 sont admissibles en vertu d'une langue maternelle. Le sont-ils également si cette langue maternelle est double ou même triple ? C'est une question que les tribunaux seront peut-être amenés à trancher¹¹.

Cette description des bénéficiaires des droits conférés par l'article 23 nous permet de dégager quelques critères déterminants qui servent à délimiter les paramètres de l'étude subséquente. Tout d'abord, le nombre d'ayants droit en vertu de l'article 23 doit être calculé à partir du nombre de parents bénéficiaires des droits. Ces parents doivent répondre aux critères suivants : 1) être citoyens canadiens, 2) résider dans une province ou territoire du Canada, 3) être de langue maternelle de la minorité (qu'elle soit unique, double ou triple).

Les critères linguistiques touchent trois catégories de personnes. Tout d'abord, le parent « dont la première langue apprise et encore comprise est celle de la minorité [...] » se voit conférer des droits par l'alinéa 23(1)a). C'est d'ailleurs ainsi qu'en 1981, Statistique Canada définissait la langue maternelle⁹. La définition donnée à la langue maternelle est donc précise et touche essentiellement la langue de socialisation initiale d'un individu.

Un deuxième critère linguistique, énoncé à l'alinéa 23(1)b), porte sur la langue d'instruction du parent au primaire. Ainsi, au Canada, le parent ayant reçu son instruction au primaire dans la langue de la minorité a le droit de faire instruire tous ses enfants dans la langue de cette minorité.

Enfin, le paragraphe(2), qui comprend un troisième critère linguistique, précise que l'article 23 s'applique également aux parents dont un des enfants a reçu ou reçoit son instruction primaire ou secondaire dans la langue de la minorité. C'est là le seul critère portant directement sur un enfant de la minorité; cependant, les droits qui leur sont conférés le sont par l'entremise d'un parent. Les catégories de personnes visées par l'article 23 sont résumées au tableau I-2.

S'il confère des droits à des individus, l'article 23, précisant les catégories de personnes auxquelles ils s'adressent, s'inspire d'une vision communautaire de la minorité. En effet, en passant par les parents pour accorder aux enfants des droits à des services éducatifs, enfants qui deviennent en l'occurrence des « ayants droit », l'article 23 favorise la transmission de la langue minoritaire d'une génération à l'autre.

Tableau I-2

Bénéficiaires des droits conférés par l'article 23 de la Charte

Critères généraux (obligatoires)	1. Citoyen du Canada, paragraphe 23(1)
	2. Résidant dans une province canadienne où la langue est celle de la minorité, paragraphes 23(1) et 23(2)
	3. Parent, paragraphe 23(1)
Critères linguistiques (répondre à un seul critère suffit)	1. Première langue apprise et encore comprise par le parent, alinéa 23(1)a)
	2. Langue d'instruction primaire du parent, alinéa 23(1)b)
	3. Langue d'instruction d'un enfant de la famille, paragraphe 23(2)

En règle générale, les jugements rendus depuis 1982 ne portent pas sur l'interprétation des critères d'admissibilité énoncés à l'article 23, sauf celui de la Cour suprême du Canada dans l'affaire *Quebec Association of Protestant School Boards c. P.G. du Québec* (1984). Etant donné les similitudes entre les articles 72 et 73 du chapitre VIII de la loi 101, adoptée en 1978, et l'article 23 de la *Charte*, il est clair que ce dernier a été rédigé en fonction de la loi 101. C'est ce qu'a confirmé la Cour suprême du Canada⁹. En remplaçant le territoire du

Le jugement de la Cour suprême du Canada dans l'affaire *The Law Society of British Columbia et al. c. Mark David Andrews et al.*, rendu en février 1989, peut contribuer à accentuer l'interprétation large et libérale des droits conférés par la *Charte*. Ce jugement, portant sur l'article 15 (l'égalité), reprend la notion d'interprétation « large et libérale » appliquée aux droits conférés par la *Charte*. Les causes portant sur l'interprétation de l'article 23 s'inspirent aussi des droits à l'égalité établis par l'article 15 et surtout par les dispositions du paragraphe 15(2), dit « d'action positive », prévoyant l'instauration de « lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés ». Le juge Clarke de la cour d'appel de la Nouvelle-Écosse s'est d'ailleurs inspiré de ce paragraphe pour confirmer la légitimité de la loi provinciale sur les écoles acadiennes. Enfin, le juge Monnin de la cour d'appel du Manitoba accorde une place importante à l'article 15 lorsqu'il affirme que les francophones du Manitoba ont été victimes de discrimination. Il est d'avis que le Manitoba devrait, en vertu de cet article, leur accorder un droit de gestion complet.

L'interprétation de l'article 23 a donc subi, depuis le premier jugement rendu en 1984, une mutation importante. D'une orientation générale, découlant d'abord du jugement visant la minorité anglophone du Québec et de celui concernant le *Renvoi* ontarien pour la minorité francophone de l'Ontario, elle prend ensuite un tour restrictif et se préoccupe de la compétence et de l'autorité des provinces et des territoires en matière d'éducation. Le discours des jugements, d'abord centré sur les droits et les besoins des minorités, s'est graduellement transformé en propos attentifs à la réconciliation de ces objectifs avec ceux des gouvernements provinciaux et territoriaux.

A. LES BÉNÉFICIAIRES DES DROITS

Puisqu'il vise un objectif particulier, à savoir l'épanouissement des minorités de langue officielle, l'article 23 définit clairement les catégories de personnes auxquelles il confère des droits. Nous distinguons deux types de critères tels qu'énoncés dans l'article lui-même. Les premiers sont d'ordre général et doivent tous être remplis; les seconds sont d'ordre linguistique et un seul suffit pour confirmer l'admissibilité.

Le premier critère général touche la *citoyenneté canadienne*. Tel que spécifié au paragraphe (1), n'ont des droits en vertu de l'article 23 que les citoyens canadiens.

Un deuxième critère général précise que les droits sont conférés aux citoyens *résidant dans une province canadienne*. Ainsi, les paragraphes(1) et (2) spécifient le lieu de résidence. Le paragraphe 23(1) confère également des droits aux *citoyens ayant des enfants d'âge scolaire*, primaire ou secondaire. Ce sont donc les « parents » ou le parent — quoique le mot « parent » n'apparaisse pas dans l'article — et non les enfants, qui sont bénéficiaires des droits.

L'arrêt issu du *Renvoi sur les droits scolaires à l'Île-du-Prince-Édouard* (1988) tente de réconcilier les deux interprétations en énonçant quatre principes récapitulatifs des jugements antérieurs :

1. l'article 23 tient compte des régimes provinciaux touchant l'instruction de la minorité;
2. il vient remédier aux déficiences de ces régimes;
3. son objectif est de protéger pleinement la minorité;
4. il s'agit d'un compromis politique et doit être traité avec prudence. (p. 19)

Cet arrêt tente d'établir un équilibre en se souciant à la fois de l'objectif visé et du compromis politique. Le juge Wilson, dans le *Renvoi sur le financement des écoles catholiques en Ontario* (1987), avait déjà adopté la même attitude : « *While due regard must be paid not to give a provision which reflects a political compromise too wide an interpretation, it must still be open to the Court to breathe life into a compromise* » (p. 23).

Pour sa part, le juge Twaddle⁴ de la cour d'appel du Manitoba explique, lors de son commentaire dans le *Renvoi constitutionnel* (1990), la nature du compromis politique. À son avis, le compromis provincial consiste à accepter l'obligation de fournir des services éducatifs à la minorité de langue officielle :

Section 23 undoubtedly limits provincial autonomy in the field of education. The provincial majority can no longer deny a French-language education to the children of the linguistic minority. (p. 38)

Le sens de l'expression « compromis politique » est donc légèrement modifié. Il ne s'agit plus de limiter les droits des minorités puisque l'éducation est de juridiction provinciale, mais plutôt de limiter les droits des provinces et des territoires en les obligeant à fournir des services éducatifs à leur minorité de langue officielle. Toutefois, les termes employés dans l'article 23 sont suffisamment « vagues et imprécis », dit le juge Twaddle, pour accorder aux provinces et aux territoires la flexibilité nécessaire pour juger de chaque cas particulier. Enfin, le jugement rendu par la cour d'appel de la Nouvelle-Écosse en 1989 revenait à une interprétation large et libérale. En effet, le juge Clarke a rejeté l'interprétation fondée sur le compromis politique, en stipulant que l'article 23 est distinct des droits linguistiques conférés par les articles 16 à 22 de la Charte et qu'il doit être interprété de façon « large et libérale ». Le juge Monnin de la cour d'appel du Manitoba (1990) a également préconisé une interprétation « généreuse et libérale ».

leur contexte provincial, c'est-à-dire à leur origine dite de « compromis politique » ? La réponse à cette question dépend de la vision adoptée par les juges. Les opinions sont partagées, mais elles oscillent entre deux pôles sous-tendant le discours juridique : l'objectif visant l'épanouissement des minorités de langue officielle ou le compromis visant le respect de la compétence provinciale en matière d'éducation. Nous présentons donc l'évolution chronologique des interprétations à cet égard.

Quatre jugements de la Cour suprême du Canada viennent influencer l'interprétation de l'article 23. Le premier, rendu dans la cause *Quebec Association of Protestant School Boards c. P.G. du Québec* (1984), concerne directement l'article 23 et adopte une méthode « téléologique », c'est-à-dire que son interprétation garde bien en vue l'objectif fixé au moment de l'élaboration de cet article. Ainsi, la cour a jugé que l'article 23 est un « ensemble unique de dispositions constitutionnelles » (p. 16) devant inciter les autorités à prendre des dispositions en vue de modifier les régimes en vigueur jugés déficients. La cour d'appel de l'Ontario dans *Re Minority Language Education Rights* (1984) a d'ailleurs immédiatement suivi cette orientation, en faisant valoir la nécessité d'interpréter de façon large et libérale l'article 23, conformément à son objectif originel.

Les deuxième et troisième jugements de la Cour suprême du Canada qui nous intéressent, même s'ils ne portent pas en tant que tels sur les droits des minorités, influent aussi de façon générale sur l'interprétation des droits constitutionnels. Ces jugements concernent les articles 8 (protection contre les fouilles) et 2 (liberté de conscience et de religion) de la *Charte canadienne des droits et libertés*. Le juge en chef Dickson, dans les affaires *Hunter v. Southam* (1984) et *R. v. Big M. Drug Mart Ltd* (1985), donne une interprétation fondée sur l'objectif initial de ces droits. Il conclut que la portée doit en être réparatrice et généreuse plutôt que légaliste. Afin d'illustrer le rôle que joue toute constitution, il évoque une métaphore : l'arbre vivant grandit et s'épanouit à l'intérieur de ses limites naturelles. Restreindre l'interprétation, dit-il, viendrait atrophier la constitution. Le jugement de la cour du banc de la reine de l'Alberta, dans l'affaire *Mahé et al. c. la reine* (1985) dit s'inspirer de cette interprétation.

Par contre, le juge Beetz, dans l'affaire *Société des Acadiens du Nouveau-Brunswick et al. c. Minority Language School Board no. 50 et al.* (1986), considère que les droits linguistiques définis dans les articles 16 à 22 de la *Charte* sont l'aboutissement de compromis politiques et doivent conséquemment faire l'objet d'une interprétation prudente. Les tribunaux, dit-il, doivent hésiter avant de devenir des instruments de changement. Le juge Beetz vient ainsi retracer l'élan généreux des jugements rendus jusque-là et en modifier l'interprétation juridique. En effet, son jugement, tout aussi influent que les précédents, avance des arguments plus restrictifs et attentifs au contexte provincial. Ainsi, le juge Kerans de la cour d'appel de l'Alberta (1987) s'inspire largement de ce jugement lorsqu'il estime que l'article 23 est le résultat de compromis politiques. Le juge *Wimmer* de la cour du banc de la reine de la Saskatchewan (1988) reprend également cette interprétation restreinte.

Tableau I-1

Résumé chronologique des jugements sur l'article 23 de la Charte, par province

	1982	1983	1984	1985	1986	1987	1988	1989	1990
C.-B.							<i>Whittington</i> Cour supérieure de la C.-B.		
Alb.			<i>Mahé</i> Cour du banc de la reine		<i>Mahé</i> Cour d'appel			<i>Mahé</i> Cour suprême du Canada	
Sask.		<i>Commission des écoles fransaskoises</i> Cour du banc de la reine							
Man.							<i>Renvoi</i> Cour d'appel		
Ont.			<i>Renvoi</i> Cour d'appel		<i>Marchand</i> Cour suprême de l'Ontario				
QC	<i>QAPSB *</i> Cour supérieure		<i>QAPSB</i> Cour suprême du Canada						
N.-B.		<i>SANB **</i> Cour du banc de la reine							
I.-P.-É.						<i>Renvoi</i> Cour d'appel			
N.-É.						<i>Lavoie</i> Cour suprême de la N.-É.	<i>Lavoie</i> Cour d'appel de la N.-É.		

* *Quebec Association of Protestant School Boards*
** *Société des Acadiciens du Nouveau-Brunswick*

L'interprétation de l'article 23 doit être examinée de manière à dégager les critères qui en déterminent la libéralité ou la restriction d'application. La question principale est la suivante: doit-on interpréter libéralement et généreusement les droits garantis ou doit-on les limiter à

D'ailleurs, depuis l'avènement de la *Charte canadienne des droits et libertés*, le gouvernement du Canada a, en quelque sorte, consolidé ces dispositions dans la *Loi sur les langues officielles* entrée en vigueur le 15 septembre 1988, notamment en prenant l'engagement, aux termes de l'article 41, de promouvoir la langue des minorités de langue officielle et l'épanouissement de leurs collectivités. Plus précisément, l'article 41 stipule que :

41. Le gouvernement fédéral s'engage à favoriser l'épanouissement des minorités francophones et anglophones du Canada et à appuyer leur développement, ainsi qu'à promouvoir la pleine reconnaissance et l'usage du français et de l'anglais dans la société canadienne.

L'article 43, pour sa part, vient confirmer cette orientation en donnant au Secrétaire d'État du Canada le droit de prendre les dispositions nécessaires pour « favoriser la progression vers l'égalité de statut et d'usage du français et de l'anglais dans la société canadienne ». Parmi ces dispositions, mentionnons le soutien apporté aux gouvernements provinciaux afin qu'ils permettent aux minorités de recevoir l'instruction dans leur langue :

43. (d) [...] encourager et aider les gouvernements provinciaux à favoriser le développement des minorités francophones et anglophones, et notamment à leur offrir des services provinciaux et municipaux en français et en anglais et à leur permettre de recevoir leur instruction dans leur propre langue.

II. L'INTERPRÉTATION DE L'ARTICLE 23 PAR LES TRIBUNAUX

Depuis 1982, l'article 23 de la *Charte* est soumis à l'interprétation des tribunaux. Nous possédons suffisamment de renseignements pour tracer les lignes directrices qui constituent les fondements de la mise en vigueur de ces droits, puisque les jugements ont été rendus dans le cadre de 13 procédures judiciaires³. Six jugements ont été rendus par des cours de première instance, trois par voie de renvoi constitutionnel en cours d'appel, trois par des cours d'appel provinciales et un par la Cour suprême du Canada. Le tableau I-1 en donne un résumé chronologique par province. Nous nous proposons de préciser dans cette section les divers aspects touchant les droits des minorités de langue officielle : les bénéficiaires des droits, le droit à l'instruction, le droit à des établissements, l'égalité des services et la limite du « nombre suffisant ». Notre propos se fonde sur une analyse du discours juridique des jugements rendus. Il s'appuie également sur des études commanditées (Foucher, 1988; Trudel, 1988) ainsi que sur des discussions et des présentations (M^{re} G  rald Beaudoin, M^{re} Tim Christian et M. Jean-Pierre Proulx) ayant eu lieu lors de la rencontre sur la mise au point de l'article 23 tenue les 15 et 16 avril 1988    Montr  al.

C'est cela qui est l'initiative et ce que nous recherchons, c'est de donner aux francophones hors Québec à peu près l'équivalent de ce que les anglophones ont ou avaient au Québec autrefois. (1980)

Les ressemblances entre l'article 23 de la *Charte* et le chapitre VIII (articles 72 et 73) de la loi 101 du Québec indiquent cependant que le sort de la minorité anglophone du Québec et la question de l'accès des minorités au libre choix de la langue d'enseignement étaient également au cœur des débats (Proulx, 1988). La loi 101 faisait en effet du Québec la seule province qui, en 1982, établissait clairement des critères d'admissibilité à l'instruction dans la langue de la minorité, alors que certaines provinces anglophones, notamment Terre-Neuve et la Colombie-Britannique, n'avaient aucune législation sur la langue d'instruction (Monnin, 1983).

B. LES OBJECTIFS DEPUIS L'AVÈNEMENT DE LA CHARTE

Les jugements rendus depuis l'avènement de la *Charte* entérinent et précisent les objectifs initiaux de l'article 23. Tout en reprenant l'objectif visant l'épanouissement des minorités de langue officielle, la Cour suprême du Canada apportait deux précisions en 1984. La première est que l'article 23 doit créer un régime uniforme devant permettre l'épanouissement des minorités de langue officielle de toutes les régions du pays. Cet objectif, malgré la compétence provinciale exclusive en matière d'éducation, tente de fournir des conditions similaires pour les minorités de langue officielle dans toutes les provinces et territoires. La seconde précision établit que les mesures découlant de l'article 23 doivent remédier à une situation historique entraînant l'assimilation des minorités. La Cour suprême du Canada affirme en effet :

Le constituant a manifestement jugé déficients certains des régimes en vigueur au moment où il légiférait, et peut-être même chacun d'entre eux, et il a voulu remédier à ce qu'il considérait comme leurs défauts par des mesures réparatrices uniformes, celles de l'article 23 de la *Charte*, auxquelles il conférerait en même temps le caractère d'une garantie constitutionnelle. (*Quebec Association of Protestant School Boards c. P.G. du Québec*, 1984, p.79-80)

Ainsi, selon la cour, non seulement l'article 23 confère-t-il des droits aux minorités visant leur épanouissement, mais il rappelle également que ces minorités, surtout la minorité francophone, ont subi le poids d'une situation historique à laquelle il faut remédier.

L'article 23, peut-on en conclure, vise non seulement la survie, mais aussi l'épanouissement des minorités de langue officielle grâce à un régime d'éducation qui viendra enrayer l'assimilation. Il reconnaît le rôle primordial que joue l'éducation dans ce processus d'épanouissement. En préconisant des « mesures réparatrices », l'article 23 doit prévoir un système d'éducation efficace et conforme à ces objectifs. Par leur adhésion à la *Charte*, les premiers ministres provinciaux² se sont engagés à mettre en pratique ce système d'éducation visant l'uniformité de traitement des minorités de langue officielle d'un bout à l'autre du pays.

C'est cependant en 1977, lors de la 18^e Conférence des premiers ministres provinciaux tenue à St. Andrews, au Nouveau-Brunswick, qu'ont été expressément reconnus les points suivants :

Conscients de l'importance d'assurer le maintien et, au besoin, l'essor des droits linguistiques minoritaires au Canada; et

conscients que l'éducation est la base même de la langue et de la culture;

les premiers ministres conviennent qu'ils feront tout leur possible pour offrir l'enseignement en français et en anglais, sous réserve que le nombre le justifie.

(Déclaration sur la langue)

Ces propos, cités notamment par le juge Wimmer dans l'affaire de la *Commission des écoles françaskoises et al. c. P.G. de la Saskatchewan* (1988), sont interprétés comme une intention d'accorder aux minorités des droits éducatifs équivalents à ceux de la majorité.

La Conférence des premiers ministres provinciaux de l'année suivante (1978) vint confirmer dans un communiqué la position prise antérieurement à St. Andrews. Les participants reconnurent de nouveau que l'éducation constitue le fondement de la langue et de la culture; ils affirmèrent que chaque *enfant* des minorités de langue officielle a droit à l'enseignement dans sa langue, dans des écoles primaires et secondaires, partout où le nombre le justifie.

Subséquemment, le gouvernement fédéral adopta le *projet de loi n° C-60* et publia *Le temps d'agir* (1978), document sur la réforme constitutionnelle où il était question de la protection des minorités linguistiques française et anglaise et du droit à l'éducation « là où le nombre le justifie ». Le contexte, à l'époque, favorisait le principe de l'unité nationale; il était clairement énoncé que cette unité ne serait possible que dans le respect de la diversité et de l'égalité linguistique des peuples fondateurs (Kerr, 1983).

Ces événements historiques s'inscrivent tous à l'intérieur d'un même mouvement de reconnaissance des droits éducatifs des minorités linguistiques. Ce mouvement repose, en 1982, sur trois objectifs principaux : 1) l'unité nationale par 2) un régime éducatif semblable pour les minorités francophone et anglophone afin de permettre 3) leur épanouissement linguistique et culturel.

On peut donc résumer l'histoire qui sous-tend l'article 23 en disant que l'objectif général est de favoriser l'épanouissement linguistique et culturel des minorités de langue officielle. Devant le Comité mixte spécial sur la constitution, le ministre de la Justice d'alors déclarait :

[...] c'est que nous voulons, une fois pour toutes, protéger les droits à l'éducation des Francophones hors Québec.

Mais cette réalité n'allait pas être reconnue sur le plan strictement judiciaire. Un arrêt rendu en 1917, en Ontario, (*Ottawa Catholic Separate School Trustees c. Mackell*) statua que la catégorie « religion » ne pouvait être subdivisée en catégorie « langue ». Ainsi, l'article 93 venait protéger exclusivement les droits des minorités religieuses. Cinq provinces canadiennes sont, encore aujourd'hui, sujettes aux dispositions de l'article 93 (ou d'articles semblables) conservant les protections aux minorités religieuses qu'elles desservaient par un système particulier lors de leur entrée dans la Confédération. Ces provinces sont : l'Alberta, la Saskatchewan, l'Ontario, le Québec et Terre-Neuve¹.

A. HISTORIQUE JUSQU'EN 1982

Les besoins des minorités linguistiques de langue officielle en matière d'éducation furent néanmoins reconnus dans le discours public, notamment dans le *Rapport sur l'éducation* de la Commission royale d'enquête sur le bilinguisme et le biculturalisme (1968) connue sous le nom de Commission Laurendeau-Dunton. Ce rapport précise :

Si la langue de la majorité est le seul véhicule d'enseignement dans les écoles d'une province, la minorité est en péril en tant que groupe linguistique. De par sa nature, peut-on dire, elle baigne dans un milieu social où se manifeste sans cesse la langue de la communauté majoritaire. L'école doit faire contrepoids à cette ambiance et accorder la première place à la langue minoritaire pour qu'elle puisse devenir un instrument de communication suffisant. La langue est en outre la clef du progrès culturel. Certes, langue et culture ne sont pas synonymes, mais le dynamisme de la première est indispensable à la préservation intégrale de la seconde. (p. 8)

La Commission Laurendeau-Dunton estime que l'école de la minorité doit avoir un double objectif : permettre l'apprentissage de la langue comme moyen de communication efficace et assurer la continuité du groupe en fournissant aux minorités de langue officielle un milieu favorisant leur enrichissement social et culturel. Ces deux objectifs, qui sont au cœur de l'histoire de l'article 23 de la *Charte*, furent souvent repris et soumis à des variantes.

Lors de la Conférence constitutionnelle de février 1971, les participants publièrent une déclaration à propos des droits à l'enseignement dans la langue de la minorité. On s'accorda pour dire que toute personne a le droit de recevoir un enseignement « principalement » dans la langue de la minorité, enseignement financé par les fonds publics. Cet enseignement devait être offert dans les districts bilingues de régions désignées qui comportent un « nombre suffisant » de personnes ayant choisi l'enseignement dans la langue de la minorité pour justifier l'octroi des « établissements nécessaires ». Deux termes clés de l'article 23 se trouvent déjà dans cette déclaration : « fonds publics » et « nombre suffisant ». L'esprit de cette déclaration demeure celui d'accorder à la minorité linguistique des droits à l'enseignement dans sa langue.

Dans ce premier chapitre, nous exposons les paramètres juridiques de notre étude : ceux décrivant les droits éducatifs conférés aux minorités de langue officielle par l'article 23 de la *Charte canadienne des droits et libertés* en 1982. Nous tentons d'en cerner les particularités et de permettre ainsi des analyses subséquentes dûment fondées sur la jurisprudence.

Nous décrivons tout d'abord l'origine et les objectifs de l'article 23 afin de démontrer l'esprit qui l'anime. Puis, nous en présentons l'essentiel et, pour chacune des questions qu'il soulève, nous nous référons en premier lieu au texte de l'article lui-même. Nous résumons ensuite les interprétations que les tribunaux ont apportées à chaque question. Enfin, nous concluons en indiquant les paramètres qui déterminent nos analyses eu égard à l'instruction et à la gestion scolaire.

I. LES OBJECTIFS DE L'ARTICLE 23 DE LA CHARTE

L'article 23 de la *Charte canadienne des droits et libertés* (Appendice A) est l'aboutissement d'un processus historique qui en marqua non seulement la lettre mais encore l'esprit. Nous retraversons brièvement l'origine de cet article afin d'en décrire les objectifs et de montrer sur quelles intentions reposait son élaboration.

L'enchaînement dans la loi des droits à l'instruction des minorités linguistiques est un phénomène relativement récent. Ce furent d'abord les minorités religieuses qui profitèrent de la reconnaissance des droits à l'instruction et à la gestion scolaire. La *Loi constitutionnelle de 1867* confie l'éducation aux provinces tout en garantissant les droits des minorités religieuses et en précisant, aux paragraphes 93(1) et 93(2) :

(1) Rien dans cette législation ne devra préjudicier à un droit ou privilège conféré par la loi, lors de l'Union, à quelque classe particulière de personnes dans la province relativement aux écoles confessionnelles;

(2) tous les pouvoirs, privilèges et devoirs conférés ou imposés par la loi dans le Haut-Canada, lors de l'Union, aux écoles séparées ou aux syndicats d'école des sujets catholiques romains de la Reine, seront et sont par les présentes étendus aux écoles dissidentes des sujets protestants et catholiques romains de la Reine dans la province de Québec.

En énonçant les droits relatifs aux écoles des minorités religieuses et à leur gestion, la loi protégeait de fait, lors de la Confédération, le caractère linguistique de ces minorités; les catholiques étaient pour la plupart francophones et les protestants étaient en général anglophones (Beaudoin, 1987).

CHAPITRE PREMIER

LA JURISPRUDENCE : L'ARTICLE 23 DE LA CHARTE

- I. LES OBJECTIFS DE L'ARTICLE 23 DE LA CHARTE
 - A. Historique jusqu'en 1982
 - B. Les objectifs depuis l'avènement de la *Charte*

II. L'INTERPRÉTATION DE L'ARTICLE 23 PAR LES TRIBUNAUX

- A. Les bénéficiaires des droits
- B. Le droit à l'instruction
- C. Le droit à des établissements
- D. Le droit à la gestion
- E. L'égalité des services
- F. La limite du nombre suffisant

III. CONCLUSIONS

IV. RÉSUMÉ

CHAPITRE PREMIER

La jurisprudence :

l'article 23

de la *Charte*

La culture est donc au cœur des notions d'instruction et de gestion scolaire. Non seulement en oriente-t-elle le contenu et la spécificité, mais elle soutient le dynamisme profond du groupe minoritaire. Dans le présent document, le terme « culture » se référera, selon le contexte, aux trois significations susmentionnées : connaissances, différences et décisions dans la réalité quotidienne.

d'enfants admissibles à l'instruction en 1992 et présenter des recommandations susceptibles de guider l'action des intervenants dans ce dossier.

* * * * *

Certains termes utilisés dans notre étude demandent quelques clarifications. Les mots « minorité/minoritaire » et « majorité/majoritaire » reconnaissent d'abord que le fonctionnement social d'un système d'éducation dépend d'une valeur numérique, soit « la où le nombre le justifie » pour reprendre l'énoncé de l'article 23. Pour un groupe, être minoritaire ou majoritaire dans une province ou un territoire signifie avant tout être moins ou plus nombreux. Être minoritaire désigne aussi l'appartenance à une collectivité unie par des liens culturels et historiques autres que ceux de la majorité. Enfin, les termes « minorité/minorité » indiquent un rapport de forces qui souligne la position désavantagée des minorités par rapport à la majorité (Van Amerfoort, 1978). Ce rapport de forces est en cause dans l'obtention de services d'instruction et de gestion scolaire. Il ne devrait pourtant pas s'appliquer aux minorités canadiennes de langue officielle qui bénéficient de droits constitutionnels en vertu de l'article 23 de la *Charte*, au chapitre de l'éducation, et de droits à l'égalité en vertu des dispositions des articles 16 à 22 de la même *Charte*. En réalité, ce rapport de forces est toujours présent. Dans ce document toutefois, le terme « minorité » ne sera nullement synonyme de « dominé » ou de « désavantagé ».

Quant au terme « culture » qui sous-tend l'évolution d'une minorité, sur le plan linguistique et communautaire, il englobe plusieurs concepts. Bauman (1973) fait remarquer que sa signification première s'applique à « l'esprit cultivé » au sens où l'entendait Herriot : « La culture, c'est ce qui reste quand on a tout oublié ». Dans le même ordre d'idées, la culture, dans le contexte d'un système d'éducation, est le contenu des programmes : c'est l'étude de Molière, de Louis Riel, de Gabrielle Roy, d'Antonine Maillet; c'est l'étude de l'histoire, y compris celle de la francophonie ou de l'anglophonie (Québec) de la province ou du Canada.

Un deuxième sens du terme « culture » se réfère aux différences entre les groupes, différences d'appartenance, de coutumes, de valeurs, de langue. C'est là le sens habituel donné au mot lorsqu'il s'insère dans le contexte minoritaire/majoritaire. Les programmes scolaires provinciaux doivent, dans cette optique, être enrichis de manière à refléter cette différence.

Une troisième acception du mot « culture » désigne la manière dont les groupes s'organisent pour donner un sens à leur vie et à leur réalité. Or, l'école et le système scolaire contribuent à l'édification du système des valeurs d'un groupe; c'est tous les jours que la culture se vit et se construit. Dans cette perspective, la gestion scolaire fait partie de la notion de culture, en particulier au moment où les minoritaires font leurs choix en fonction de leurs besoins et de leurs valeurs. Les minoritaires deviennent ainsi les agents de leur propre culture dans la prise de décisions quotidiennes. À l'école même, la culture définit la qualité de la vie scolaire en favorisant l'épanouissement individuel et communautaire.

Le Chapitre premier présente un résumé des interprétations de l'article 23 de la *Charte* par les tribunaux. Après avoir colligé et analysé les jugements rendus depuis 1982, nous avons tenu, à Montréal, les 15 et 16 avril 1988, une rencontre visant à mettre au point ce chapitre et à étudier cet article en profondeur. Sous l'égide du Conseil canadien de développement social et du Commissariat aux langues officielles, des constitutionnalistes, des juristes ainsi que des membres d'organismes gouvernementaux et communautaires ont participé à cette rencontre afin de mieux cerner l'état actuel de la question et d'en favoriser la compréhension. Nous donnons, dans les pages qui suivent, le bilan de leurs conclusions.

Au Canada, les décisions en matière d'éducation sont du ressort des provinces. Aussi chaque province a-t-elle son propre système scolaire modelé par l'histoire, l'immigration, l'étendue du territoire, les revendications des groupes, les lois et les affinités politiques. Notre étude porte sur le système scolaire de chaque province, dans le cadre duquel devra naître, à l'intention de la minorité, un sous-système scolaire axé sur l'instruction et la gestion. Le Chapitre II donne un aperçu global de l'état de l'instruction et de la gestion scolaire des minorités de langue officielle ainsi qu'une description historique, statistique et systémique pour chaque province et territoire. En plus de fournir des éléments inédits, ce chapitre regroupe des données difficiles à obtenir jusqu'ici, parce que diffusées par de multiples sources, éparées dans chaque province.

D'un point de vue méthodologique, le Chapitre II se fonde sur les documents recueillis auprès des ministères de l'Éducation des gouvernements provinciaux et des organismes minoritaires ainsi que sur les interviews et les vérifications que nous y avons faites. Nous avons également mené une étude démographique nous permettant de dénombrer les ayants droit à l'instruction selon les critères énoncés à l'alinéa 23(1)a) et de déterminer le type de services reçus dans les programmes de la minorité et dans les écoles qui leur sont exclusivement réservées.

Les chapitres III et IV portent principalement sur la question de la gestion scolaire. Premièrement, nous avons recensé tous les modèles de gestion proposés ou en vigueur depuis 1980. Deuxièmement, nous avons analysé les modèles de gestion scolaire de la majorité afin d'en catégoriser les composantes et les fonctions inhérentes à la gestion scolaire. Nous avons adapté ces dernières aux besoins et aux objectifs de l'éducation minoritaire afin d'établir des critères d'évaluation pouvant servir à analyser les modèles conçus pour les minorités et leur assurer ainsi une gestion scolaire équivalente à celle dont jouit la majorité. Ces informations ont été reportées sommairement sur une grille fonctionnelle d'évaluation. Troisièmement, nous avons analysé les modèles de gestion minoritaire pour en faire ressortir les avantages et les inconvénients selon la grille adoptée; cette analyse fournit des outils concrets qui permettent des prises de décision éclairées. Enfin, nous avons présenté nos analyses et nos conclusions à des représentants des gouvernements provinciaux et territoriaux, des dirigeants d'organismes minoritaires, des spécialistes et des parents qui, tous, ont convenu de leur validité.

Le Chapitre V fournit un bilan des acquis découlant de la reconnaissance des droits, de 1982 à 1990. Nous nous tournons ensuite vers l'avenir pour donner un aperçu du nombre

Par suite de la proclamation de la *Charte canadienne des droits et libertés*, le 17 avril 1982, et notamment de l'article 23 sur les « droits à l'instruction dans la langue de la minorité », l'éventail des revendications des minorités de langue officielle a atteint des proportions sans précédent. Appuyées par la *Charte*, ces minorités paraissent plus décidées que jamais à assurer leur survie et leur épanouissement. Parmi les droits revendiqués, ceux à l'instruction et à la gestion des établissements scolaires font l'objet de multiples interventions communautaires et judiciaires.

Ces revendications portent sur plusieurs plans. Tout d'abord, dans les communautés minoritaires des diverses régions du Canada, les associations et les groupes intéressés tentent de faciliter les choix des individus, surtout ceux des parents, par la diffusion des connaissances qu'ils possèdent sur les possibilités d'épanouissement ou d'assimilation. Ensuite, les gouvernements fédéral et provinciaux reçoivent de plus en plus de requêtes des incitants, en particulier, à adopter une structure de gestion visant à assurer la survie des minorités de langue officielle et à faire respecter leurs droits. Sur le plan judiciaire, les tribunaux sont saisis de multiples causes dans toutes les régions du pays. De 1982 à 1990, dix causes reposant sur les droits conférés aux minorités officielles par l'article 23 de la *Charte* ont été jugées. Six autres étant en attente ou en préparation¹, 16 causes, au total, tentent actuellement de faire préciser les droits des minorités de langue officielle et d'en accélérer la mise en œuvre par des systèmes d'éducation qui tiennent compte des besoins de ces minorités. Le Programme de contestation judiciaire, géré depuis 1985 par le Conseil canadien de développement social, joue un rôle déterminant par l'appui financier qu'il accorde à ces actions judiciaires.

Dans cette conjoncture, ce rapport tente de cerner l'état de la situation d'un bout à l'autre du Canada surtout en ce qui a trait aux droits des minorités de langue officielle portant sur l'instruction et la gestion scolaire. Notre étude fournit notamment des données précises sur la situation actuelle et virtuelle de l'instruction et de la gestion scolaire en milieu minoritaire. En outre, elle décrit les changements survenus principalement entre avril 1982 et février 1990. À titre de livre de référence, ce document vient combler une lacune en présentant un portrait global de la situation à l'échelle du pays.

Ce rapport tente également de guider l'action des intervenants² susceptibles de favoriser le respect des droits scolaires des minorités de langue officielle. Il vise à augmenter, au sein de la société, la compréhension des droits scolaires tels que consacrés par l'article 23 de la *Charte* et à aider les partenaires du projet éducatif minoritaire de chaque province et territoire à mieux définir les questions et les objectifs permettant de faire valoir ces droits. Voilà pourquoi nous avons opté pour une présentation pédagogique de notre documentation, soit des résumés, des tableaux récapitulatifs ainsi que des questions à discuter.

REMERCIEMENTS

Un grand nombre de personnes ont participé aux réflexions, aux cueillette de données, aux analyses et à la production de ce document. Je les remercie cordialement de leur expertise et de leur appui. Tout d'abord, M^{mes} Chantal Ouellet (Université du Québec à Montréal) et Nathalie Lussier (Université McGill) ont effectué la recherche documentaire. Ont participé aux consultations ou aux recherches commanditées, M^e Gérard Beaudoin (alors professeur à l'Université d'Ottawa), M^e Tim Christian et M. Paul Dubé (Université de l'Alberta), M^e Pierre Foucher (Université de Moncton), M. Michel Pailhé (Conseil de la langue française) et M^e Pierre Trudel (Université de Montréal). De nombreuses personnes et représentants d'associations nous ont fait bénéficier de leurs connaissances de la situation dans chaque province et territoire. Tous ont exprimé un grand intérêt pour notre travail. M. Jean-Claude LeBlanc, du Commissariat aux langues officielles, a bien voulu nous livrer ses judicieux commentaires. Enfin, la production éditique est l'œuvre de M^{me} Nathalie Lussier avec la collaboration de M^{me} Suzanne Desharnais et de M. Daniel Villeneuve.

Angéline Martel, Ph.D.
Montréal, février 1990

Notes

1. La structure de l'ouvrage qui en a découlé est présentée dans l'introduction.
2. Bien que cette étude ait été réalisée sous l'égide du Commissariat aux langues officielles, les idées qui y sont exprimées demeurent la responsabilité de l'auteur et ne représentent pas nécessairement la position du Commissaire aux langues officielles ou de ses conseillers.

Durant la recherche, M^{me} Martel a obtenu la collaboration d'experts en démographie et en démolinguistique. Les données de l'étude ont par ailleurs fait l'objet de maintes consultations et vérifications, notamment auprès des ministères de l'Éducation. En accord avec l'auteur, nous avons également soumis ses recherches dès l'automne 1989 à une validation par ses pairs afin d'assurer la vérification de la qualité méthodologique de l'ouvrage et de ses conclusions. La recherche a ainsi pu bénéficier des commentaires judicieux que nous avons reçus, en particulier de MM. Réjean Lachapelle de Statistique Canada, Stacy Churchill de l'Institut d'études pédagogiques de l'Ontario et Lionel Desjarlais de la faculté d'éducation de l'Université d'Ottawa.

L'initiative qu'a prise la Commission nationale des parents francophones de confier à l'auteure la préparation d'une trousse de formation relative à l'article 23 et à la gestion scolaire nous a d'autant plus réjouis que l'on assure ainsi à un grand nombre de parents l'accès aux résultats de l'étude, ce qui accroît considérablement son utilité. Titulaires des droits garantis par l'article 23, ils sont en effet les seuls à pouvoir inscrire leurs enfants à l'école de la minorité et à les faire bénéficier de ces droits. Quant à la communauté d'expression anglaise du Québec, il appartiendra à un organisme comme l'Alliance Québec de juger si cet outil de qualité mérite d'être davantage mis à la portée de ses membres de manière appropriée.

Nous souhaitons vivement que la publication et la diffusion de cet ouvrage² contribuent à une mise en œuvre plus éclairée des droits scolaires des minorités de langue officielle dans l'ensemble du pays. Nous espérons qu'ainsi le 17 avril 1992, dixième anniversaire de la *Charte canadienne des droits et libertés*, consacrera des réalisations d'envergure, dignes de l'esprit qui l'a inspiré.

D'Iberville Fortier
le 5 décembre 1990

Constatant la multiplication des recours portés devant les tribunaux et jugeant leurs répercussions inutilement coûteuses sur le plan social, le Commissariat a voulu favoriser une approche plus fructueuse. Il a donc pris l'initiative, en 1986, de proposer au Conseil des ministres de l'Éducation du Canada (CMBC) une recherche-action dont les mérites ont été défendus par le Secrétaire d'État d'alors, David Crombie, et à laquelle le Commissariat était disposé à participer. Puisqu'il était question de réformer des « régimes déficients » et que les territoires et la majorité des provinces faisaient face à des difficultés analogues, cette démarche nous a paru tout à fait logique. En effet, il nous semblait que, tôt ou tard, la plupart des autorités en arriveraient inmanquablement à devoir élaborer, en consultation avec les intéressés, un plan provincial ou territorial de mise en œuvre « des mesures réparatrices uniformes » que constituait l'article 23. Toutefois, le CMBC n'a pas retenu notre suggestion, certains de ses membres préférant sans doute faire face à la question dans le seul cadre de leur compétence.

Les échanges de vues entre les commissaires successeurs et les principaux intéressés au cours de leurs voyages au pays ont continué entre temps de nourrir leur réflexion sur cette question. Nos entretiens sur ce sujet avec le ministre de l'Éducation de la plupart des provinces et des territoires ainsi qu'avec la majorité des premiers ministres, tout comme l'attention consacrée à ces questions dans nos rapports annuels présentés au Parlement, semblent avoir eu une certaine influence. Ils ont aussi confirmé à nos yeux la nécessité d'entreprendre une étude générale sur la portée de l'article 23 et la problématique de sa mise en œuvre au pays. Le Commissariat souhaitait en effet, pour combler le vide causé par la nature essentiellement fragmentaire des renseignements pertinents disponibles à ce jour, mettre à la disposition de l'ensemble des intervenants — les autorités scolaires provinciales et locales, les parents et les groupes minoritaires, les juges et les procureurs, les chercheurs et autres intéressés — un ensemble de données et d'analyses qui faciliteraient la concrétisation des droits scolaires des minorités.

Étant donné sa formation, son expertise pluridisciplinaire et son intérêt marqué pour ces problèmes, c'est à Mme Angéline Martel que nous avons confié la direction de cette étude. Nous lui avons demandé de dégager le sens et la portée de l'article 23 en s'assurant du concours de constitutionnalistes qui feraient l'analyse jurisprudentielle, de décrire l'état actuel de l'éducation des minorités dans chacune des provinces ainsi que dans les territoires, de circonscrire les éléments essentiels de la gestion scolaire minoritaire, de même que les diverses modalités de son exercice, de manière à éclairer l'action des intervenants dans ce domaine tout aussi complexe que vital¹.

Lorsqu'elle a commencé sa recherche, il y a trois ans déjà, Mme Martel venait tout juste de quitter son poste de professeure à l'Université de l'Alberta, pour entrer à la faculté d'éducation de l'Université McGill. Elle est actuellement professeure de sociolinguistique et de linguistique appliquée à la Têlé-Université du Québec, à Montréal, et elle a su mettre à profit sa connaissance approfondie de l'éducation en milieu minoritaire et des questions portant sur la langue et les minorités.

PRÉFACE

À la suite de l'entrée en vigueur de la *Charte canadienne des droits et libertés*, le 17 avril 1982, bon nombre d'intéressés s'attendaient à ce que l'article 23 produise des résultats bien plus spectaculaires que ceux dont ils ont été témoins. Un profond désenchantement a progressivement remplacé l'enthousiasme des premières heures qu'avaient suscité chez la plupart des communautés minoritaires les promesses de services éducatifs essentiels à leur survie et à leur épanouissement. Dans la majorité des provinces, le nombre d'établissements de la minorité, qui ont été créés au fil des ans, est loin de correspondre, encore maintenant, aux besoins des communautés minoritaires de langue officielle et de respecter leurs droits. Face à l'érosion d'une partie vitale des assises de la dualité linguistique canadienne qui en découlaient, le Commissariat aux langues officielles est devenu de plus en plus préoccupé par cette lenteur et par l'absence de données et d'analyses aptes à éclairer et à guider la mise en œuvre de telles dispositions constitutionnelles.

La Cour suprême du Canada, dans le jugement *Mahé et al.* qu'elle a rendu le 15 mars 1990, a confirmé jusqu'à quel point nous avons eu raison de nous inquiéter avec tant d'autres de la situation et d'estimer qu'il était de notre devoir de nous intéresser à cette question centrale.

Ainsi, la Cour suprême déclare :

« L'article 23 est une des composantes de la protection constitutionnelle des langues officielles au Canada. Il revêt cependant une importance toute particulière à cet égard en raison du rôle primordial que joue l'instruction dans le maintien et le développement de la vitalité linguistique et culturelle. Cet article constitue en conséquence la clé de voûte de l'engagement du Canada envers le bilinguisme et le biculturalisme. »

On comprend dès lors les raisons pour lesquelles le Commissariat aux langues officielles a voulu contribuer à la mise en œuvre de l'article 23, comme à la pierre d'assise de son option jeunesse. C'est ainsi qu'en 1981, Maxwell Yalden, le Commissaire aux langues officielles de l'époque, a comparu devant le Comité parlementaire spécial sur la Constitution, alors qu'on se penchait sur la formulation de l'article 23 de la *Charte*. Puis, en 1984, dans le premier renvoi constitutionnel au pays sur le sens et la portée de cette disposition, la cour d'appel de l'Ontario a reconnu au Commissaire le statut d'intervenant et sanctionné son interprétation de la définition linguistique des termes « établissements de la minorité ». La même année, dans un jugement rendu dans la cause de l'*Association des commissions scolaires protestantes du Québec c. le Procureur général du Québec*, la Cour suprême du Canada a déclaré : « [...] le constituant a manifestement jugé déficients certains des régimes en vigueur au moment où il légiférait, et peut-être même chacun de ces régimes, et il a voulu remédier à ce qu'il considérait comme leurs défauts par des mesures réparatrices uniformes, celles de l'article 23 de la *Charte*, auquel il conférait en même temps le caractère d'une garantie constitutionnelle ». Par la suite, le Commissaire a été autorisé à intervenir lors de l'audition d'autres causes entendues par la cour d'appel de plusieurs provinces, de même que de l'affaire *Mahé et al.* en Cour suprême.

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Remarque : Dans cette publication, les termes de genre masculin utilisés pour désigner des personnes englobent à la fois les femmes et les hommes.

Janvier 1991

DE L'INSTRUCTION À LA GESTION

AU CANADA :

DE LANGUE OFFICIELLE

DES MINORITÉS

LES DROITS SCOLAIRES

ANGELINE MARTEL

